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Supreme Court, U.S.
FILED

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No. ______

In The

SUPREME COURT OF THE UNITED STATES

HEMA MENON,

Petitioner,

v.

ANN DUX,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Connecticut

PETITION FOR WRIT OF CERTIORARI

HEMA MENON
Petitioner
2 Spitzer Court
Norwalk, CT 06854
(203) 852-8168

5/0

QUESTIONS PRESENTED

1. Does the exclusion of minorities and persons of color from the jury based upon race, though it gives an appearance the exclusion was based upon facially neutral grounds and upon factors apart from race, deprives a racial minority of equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution when it exerts to discriminate against the minority?

2. Could a police officer be considered a reliable witness to the accident and his testimony be given greater weight over the testimony of a witness to the accident when he had improperly exercised his authority depriving one of one's due process rights and equal rights protection?

3. Did the Trial Court, the Appellate Court, and the Connecticut Supreme Court violate the petitioner's guaranteed rights of due process and equal protection by deviating from the accepted standard of proof, by disregarding the rules of evidence, by basing the facts upon no probative value, and by accepting testimony deficient in any relevant evidence as to the essential element of the case in the light of the evidence proffered by the petitioner?

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Hema Menon, respectfully petitions for a Writ of Certiorari to review the Order of the Connecticut Supreme Court. This Petition raises important constitutional issues and issues which are unresolved, including whether a juror panel could be racially diverse, a representation of the community, so it would be reflective of the views of the community, whether there is any justification to remove prospective jurors by peremptory challenges when inherent motive is unknown, and whether a jury verdict should be respected when the jurors do not take their job seriously and do not show any respect for the Court (See Footnote 32), whether a police officer's testimony should be given greater weight than the ordinary people and whether the police report should be considered as a reliable document and be honored when it is subject to speculation and hearsay, and whether the damage estimate or repair cost of a vehicle should be limited to the damage phase when it could provide circumstantial evidence and whether bifurcation is beneficial in such cases.

OPINIONS AND ORDERS BELOW

There are three Orders of the Connecticut Supreme Court which are relevant to this Petition. They are the Order granting the Motion to file late Certification for Petition by Supreme Court and the Order denying Petition for Certification to Appeal which are dated June 9, 2004 and the Order denying the Motion for Reconsideration of the denial of Petition for Certification which is dated June 30, 2004. All these Orders are without opinion and were reported to the Reporter of Judicial Decisions. The three Orders are printed as Appendix A to this Petition at App. 1-3.

The Appellate Court rendered its decision affirming the decision of the Trial Court (Stamford Superior Court of Connecticut) on January 20, 2004. The opinion of the

Appellate Court was published at *Menon v. Dux,* 81 Conn. App. 167, 838 A.2d 1038 (2004). It is printed as Appendix B to this Petition at App. 4-13.

JURISDICTION

The Order denying the Motion for Reconsideration filed on June 21, 2004 at the Supreme Court is dated June 30, 2004. This Petition is timely filed within ninety days of that Order. 28 U.S.C. § 2101(c); Sup. Ct. R. 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Petition involves U.S.C.A. Const. Amends. 1 and 14 which are printed at App. 14.

STATEMENT OF THE CASE

A. Procedural History

The petitioner was given a summons for "following too close" by the police officer at the accident scene. On June 17, 1996, the prosecuting authority for the Danbury Superior Court of the state of Connecticut nolled the false charge the officer brought against the petitioner. (App. 15).

In January 15, 1998, a civil action was filed by the petitioner, Hema Menon, against the respondent, Ann Dux, at the Stamford Superior Court of the state of Connecticut, asserting negligence in the operation of the motor vehicle, causing an accident and injuries. (App. 16-17). An amended complaint was filed on March 13, 1998 and a second amended complaint on April 2, 1998. (App. 18-19). The case is lengthy as it spanned about eight and half years from the time of the accident till the present. (App. 15-36)

The discovery process was not completed at the time of the trial as the respondent improperly withheld information. For example, she provided only a page of her repair invoice, Plaintiff's Exhibit 8, and the copy is unclear. (App. 37).

The deposition of the petitioner was held on April 28, 1999, and the transcript was sent to her counsel on June 17, 1999. There are many inconsistencies in the transcript, and the Court and the respondent's counsel was informed. (App. 38-55). The Court ordered another deposition to be taken on or before September 4, 2002, but no deposition was taken. Her counsel threatened to impose sanction and motion against her if the transcript was suppressed. On November 9, 2000 and November 28, 2000, her counsel filed a motion to "sustain her objection and levy any such sanctions against the plaintiff that the Court deems appropriate."

B. Proceedings in the Trial Court

The jury selection was held on September 13, 2002. After the jury selection, the trial was bifurcated with the first phase devoted to the determination of liability. (9/17/02 Tr.[1] p. 3, 29; 9/18/02 Tr. p. 98-99, 186-187).

On February 20, 1996, the petitioner was driving along Lake Avenue Extension with her mother, the passenger, in the vehicle. (9/17/02 Tr. p. 30-31, 42-43). At the time of the accident, she lived in Danbury (Id. p. 43) and drove on Lake Avenue road every day. It was a rainy day and somewhat foggy, and the roads were slippery. (Id. p. 42-43). The respondent's vehicle, suddenly, came from left, from the opposite side of the street, turned in front of her, and slammed into her vehicle at a high rate of speed.[2] (Id. 30-31,

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[1] Tr. refers to the trial transcript. The pages in the transcript volumes are not numbered consecutively, so each volume is assigned with the date when the testimony took place at the trial.

58-59, 77). When her vehicle was struck, she, quickly, turned around and saw the direction from which the respondent was coming. (Id. p. 88-90). The impact of the collision pushed the vehicle, partially, to the shoulder of the road about a yard from the curb. (Id. p. 61, 74, 100-101). She made a wide turn and overshot the driveway. (Id. p. 78, line 20-22). Had she turned directly into the driveway though she came from the opposite side of the street and even at a high speed, she could have avoided the collision. (Id. p. 78).

Three days after the accident, the petitioner felt pain all around the body. Later, she had swelling all over her body, especially her wrists and ankles. (9/17/02 Tr. p. 80-81).

The respondent was called as a hostile witness during the trial. (9/18/02 Tr. p. 9). She claimed, she was driving westbound along Lake Avenue Extension (Id. p. 58), and as she was making a right turn into the driveway for the parking lot, the petitioner driving on her right in the shoulder area,[3] struck her vehicle. (Id. p. 13-14, 33-34, 37-38).

The petitioner's mother testified, she was riding as a passenger in the petitioner's vehicle on the day of the accident. She testified, the police officer talked to the

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[2] The respondent violated all the traffic rules – she was speeding, she did not have her lights on though it was a rainy and somewhat foggy day, she did not have her left-turn signal light on, she was driving with a broken windshield, she did not wear her glasses, she failed to grant the right of way, she made an abrupt turn, she failed to apply her brakes and failed to slow down or turn her vehicle to avoid striking the other vehicle, and she overshot the driveway and slammed into the other vehicle and continued turning into the vehicle to get to the other side of the street.

[3] The shoulder cannot be traversed by a vehicle as it is blocked by a cement curb. The petitioner testified, there was a curb at the driveway and therefore, it was impossible for her to have been driving on the shoulder and strike the respondent's vehicle as she was making a right turn into the driveway because the curb is an "obstruction" preventing anyone from entering the driveway and striking another vehicle. (9/17/02 Tr. p. 75-77).

respondent, privately, for "long time", about "15 to 20 minutes" in the parking lot. (9/18/02 Tr. p. 85, line 20-21). She testified, she was ignored by the officer and was not interviewed by him. (Id. p. 84, 86).[4] The petitioner's mother testified, she saw the respondent driving down the road toward them, coming in the opposite direction prior to the impact. (Id. p. 78-79, 97). She also testified, the vehicle was struck twice by the respondent. (Id. p. 78, line 8-9).

The defense called as a witness to the accident, Officer Lawrence Frinton of the Danbury Police Department. (9/18/02 Tr. p. 102-103). He testified, the damage to the petitioner's vehicle was "the left front, driver's side front" and the damage to the respondent's vehicle was on the right side of her vehicle. (Id. p. 109).

The petitioner testified, she had damage on the left front side fender, left-mounting panel, left headlight, left signal light, and front bumper. (9/17/02 Tr. p. 60, 78-79). She testified, the respondent had damage on her right front door. (Id. p. 60, 78-79). Her mother testified, the respondent had damage on the "passenger seat door". (9/18/02 Tr. p. 86). The respondent testified, her damage was at the right rear quarter panel of her vehicle. (Id. p. 40). On direct examination, she admitted, her right front door was also damaged. (Id. p. 49-50). See Plaintiff's Exhibit 8. (App. 37).[5]

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[4] The accident report introduced into evidence as a defense exhibit did not list the passenger as having been present. (9/18/02 Tr. p. 147).

[5] Plaintiff's Exhibit 8, the respondent's damage estimate, show that the vehicle was a "borderline total loss" and "[a]ny supplemental may result in total loss status". However, she claimed, it was only because it was an old car and not because the damage was extensive. (9/18/02 Tr. p. 49-51). However, Defendant's Exhibit B1 and B2 (photographs depicting the damage on the respondent's vehicle) show only a slight damage and do not qualify for a "borderline total loss."

The petitioner's letter from an Expert about the damage on her vehicle was caused by one coming from the opposite direction, was claimed as hearsay by the respondent's counsel on September 13, 2002 and the Court dismissed this evidence as hearsay without giving the Expert in vehicle crashes and body estimating, the chance to testify.

The jury rendered a verdict finding no negligence on the part the respondent. (9/18/02 Tr. p. 96). Thereafter, the jury returned a respondent's verdict. (Id. p. 199-200).

On September 30, 2002, timely motions to set aside the verdict, for a new trial, and in arrest of judgment were filed, stating that the verdict was contrary to the evidence, the jury was selected in a manner which improperly excluded minorities and persons of color, and the evidentiary rulings during the trial were erroneous. (App. 24-28). These motions were denied on October 3, 2002 by the Court and judgment was rendered in accordance with the verdict.

C. Proceedings in the Appellate Court

On October 16, 2002, an appeal to the Appellate Court was filed with the supporting documents. On January 20, 2004, the Appellate Court affirmed the Superior Court's decision. *Menon v. Dux,* 81 Conn. App. 167, 838 A.2d 1038 (2004). App. 4-13 (App. B).

The Appellate Court declined to review the plaintiff's claim for her repair cost, holding that it was raised for the first time on appeal. The Court would not consider whether a review would be warranted under the plain error doctrine as the Court held, she did not seek review under the rubric of plain error. The Appellate Court held, her unpreserved challenge of the Trial Court's jury charge in which she requested for a plain error review did not warrant plain error review, and the Court ruled on this issue without considering the other charge raised in the brief. The Court in holding, the Trial Court did not abused its discretion in denying her motion to set aside the verdict, overlooked and did not address the issues raised -- it was impossible at the time of the accident for a vehicle to travel in the right shoulder, and the defendant presented evidence which made her version a physical impossibility, and the officer's testimony that "[p]hysically, a car couldn't travel on this shoulder if it's very wide." (9/18/02 Tr. p. 121). The Court found, the defendant's version was "not supported by the entire record." (*Id.* at 174). The Court found, the "plaintiff's testimony roundly contradicted that of the defendant, and the jury reasonably could have elected to believe the plaintiff and not the defendant." (*Id.* at 174).

D. Proceedings in the Connecticut Supreme Court

The Petition raised issues that the Appellate Court overlooked and did not rule or did not address. (App. 59-64). The appeal brought out, the Appellate Court overlooked and did not rule on the issue raised in the brief that the mere evidence that the shoulder cannot be traversed by a vehicle shows that the respondent's version was not supported by facts. The appeal brought out, the charging conference conducted by the Trial Court was raised and the statutory provisions involved were included in the brief, but the Appellate Court overlooked this issue and did not address it. The appeal brought out, the inability of the respondent to recall a number of the details of the accident and her evasiveness about them both at the trial and at her deposition, but the Appellate Court did not address it. The appeal brought out, the Appellate Court overlooked and did not rule on one of the charges of the Trial Court that was raised in the brief. The appeal brought out, it is of a great public importance, both parties be similarly situated in terms of jurors to ensure the issues are considered seriously and the verdict is rendered fairly. The appeal brought out, it is of great public importance, the testimony of everyone be treated alike as the Appellate Court found, the respondent's version was "bolstered by Frinton's testimony", so her version was credible. *Menon v. Dux*, 81 Conn. App. 167, 174 (2004). She brought up cases comparable cases to her case in which the Supreme Court vacated the findings of fact and law, reversed the Trial Court ruling and remanded the case for further proceedings or a new trial, such as the *Barr v. Goldome Realty Credit Corp.*, 46 P.3d 1009 (Alaska 2002), where the Supreme Court vacated the findings of fact and law of the Trial Court and remanded as there remained factual disputes between the two parties; the *Hutchinson v. Plante*, 175 Conn. 1, 392 A.2d 488 (1978) in which the case involves the same issue as her case with virtually identical facts to this case, in that the police officer accepted and reported the respondent's version; the *Liimatta v. Vest*, 45 P.3d 310, 312-313, 317-319 (Alaska 2002) where the Supreme Court reversed the Trial Court ruling and remanded for a new trial because the exclusion of certain evidence was an abuse of discretion; the *Foss v. Russo,* 156 Conn. 230, 232-233 (1968) in which the Supreme Court reversed on appeal, holding that the facts of the case warranted the charges excepted to, even in the absence of the charge; the *State v. Hinckley*, 198 Conn. 77, 88, 502 A.2d 388 (1985) where the error in the charge "resulted in an unreliable verdict or a miscarriage of justice"; the *Elliot v. Sears, Roebuck & Co.*, 30 Conn. App. 664, 674 (1993) in which the Court held that it is important for the Trial Court in its instruction to the jury to refer to the evidence; the *Smith v. Czescel*, 12 Conn. App. 558, cert. denied, 206 Conn. 803 (1987) in which the plaintiff's unpreserved claims qualified for review under the plain error doctrine without filing a request to charge and without taking an exception to the charge about their claims of error; the *DeSena v. Waterbury*, 249 Conn. 63, 72, note 10, 731 A.2d 733, 737, note 10 (1999) and *Society for Savings v. Chestnut Estates, Inc.*, 176 Conn. 563, 568, note 2, 409 A.2d 1020, 1022, note 2 (1979) in which the Trial Court considered the issue that was not raised by the counsel in the Trial Court; the *State v. Dabkowski*, 199 Conn. 193, 198, 506 A.2d 118, 121 (1986) in which the Court held that the claim was "functionally made" at the trial though articulated in a different manner, so review would be warranted; the *Daily v. New Britain Machine Co.*, 200 Conn. 562, 576, note 11, 512 A.2d 893, 901, note 11 (1986) in which the plaintiffs "did not articulate" their claims as "fully or as clearly as required", but the Court held that the issues were "raised sufficiently to warrant review on appeal"; the *Mather v. Griffin Hospital*, 207 Conn. 125, 138, 540 A.2d 666, 673 (1988) in which the Court held that the claim was "distinctly raised" though it was "not well articulated"; the *Salmon v. Dept. of Public Health & Addiction Services*, 58 Conn. App. 662-663, 754 A.2d 828 (2000) in which the Appellate Court held that the plaintiff failed to raise her claim at the trial, but the Supreme Court held that the claim was "functionally raised" though she "did not articulate her claim" precisely. *Id.* at 288, 305, 788 A.2d at 1199, 1210; the *Adams v. Way*, 32 Conn. 160 (1864) in which the defendant objected to the plaintiff's evidence offered to support his claim and the Court excluded it, but the Supreme Court held that "the plaintiff had a right to prove every material allegation of his declaration" and the plaintiff was entitled to a new trial; the *State v. Golding*, 213 Conn. 233, 567 A.2d 823 (1989) in which the plaintiff requested for a plain error review as it interfered with her fundamental right to a fair trial; the *Smith v. State of Texas*, 311 U.S. 128 (1940) in which the Supreme Court held, the conviction could not stand if there has been discrimination in the jury selection; the *Taylor v. Louisiana*, 419 U.S. 522 (1975) in which the Supreme Court held, it was unconstitutional as it violated the right to an impartial jury.

For the reconsideration appeal, the petitioner elaborated on the cases comparable to her case which were addressed in the Petition and a few cases comparable to her case which were not brought out in which the Supreme Court vacated the findings of fact and law, reversed the Trial Court ruling, and remanded the case for further proceeding or a new trial and also many other cases which were reconsidered by the Supreme Court based upon its decision on another case. The petitioner requested for reconsideration as the Order is in conflict with the cases comparable to her case in terms of issues, such as *Hutchinson v. Plante*, 175 Conn. 1, 392 A.2d 488 (1978); *Barr v. Goldome Realty Credit Corp.*, 46 P.3d 1004-1009 (Alaska 2002); *Liimatta v. Vest*, 45 P.3d 310 (Alaska 2002); *Adams v. Way*, 32 Conn. 160 (1864); *State v. Golding*, 213 Conn. 233, 567 A.2d 823 (1989); *Smith v. State of Texas*, 311 U.S. 128 (1940); *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Weisgram v. Marley Co.*, 120 S. Ct. 1011 (2000).

E. Factual Background

The accident report dated 2/20/96 and the narrative supplement dated 3/7/96 contain several inconsistencies and cannot be used as a guide as to how the accident occurred. (App. 33-35). Though the report date was dated 2/20/96, the police report was not ready until a few days after the accident, and though the narrative supplement was dated 3/7/96, the report was not ready until several days after 3/7/96. This shows the officer had enough time to ponder about the accident and to clarify the information.

Police Accident Report of 2/20/96

The officer found the petitioner at fault for the accident without looking at the damage of both vehicles. App. 36 shows the document given to both the drivers at the scene which indicates he did not look at the damage of the vehicles when he found her at fault. In App. 33, the part that was damaged of both vehicles was noted down which proves he only looked at the damage of both vehicles after finding her at fault. The officer also did not write all the parts of the vehicles which were damaged which shows he did not look at the damage of the vehicles carefully. (App. 33).

The respondent made a left turn and slammed into her vehicle, damaging the driver's front and side – the vehicle damage clearly indicates the respondent is at fault. He drew the diagram and wrote the reports based upon her brief statements against the petitioner and not based on his personal observation at the scene as she moved her vehicle to the parking lot. The accident report does not show anyone was hurt based solely upon the other driver's opinion.

For the accident report dated 2/20/96, the petitioner told the officer at the scene, the respondent took a left turn and turned in front of her striking her vehicle. He, then, asked her, "Who was behind?" and she said, she was behind as she had already explained to him before he asked this question that the respondent turned in front of her striking her vehicle. He ignored the sequence of the accident as explained to him and took her words out-of-context when she had already explained to him why she was behind before he asked her the question, "Who was behind?". She told him, repeatedly, she was not driving in the shoulder and the impact pushed the vehicle to the shoulder. (App. 35). She told him, repeatedly, the respondent struck her vehicle. He did not interview the passenger who had rode with the petitioner though she stood near him at the scene. After his brief interview with both drivers, he went to the parking lot where the other driver left her vehicle and improperly obtained information. He spent more time talking with her in the parking lot than interviewing both drivers at the scene.

The inconsistencies in the report was brought to the attention of the officer and his superior and the Mayor of Danbury. He was told to write an objective report with her statement of how the accident occurred without making a judgment call on who was at fault. In the 3/7/96 report, he did not put the inconsistencies to rest, but he accentuated them.

Narrative Supplement of 3/7/96

In this report, he wrote the damage to the vehicles, incorrectly. He omitted the details from the report -- suddenly, the other driver came from the left across the other side of the street and hit the front of her vehicle; this vehicle did not stop and continuing turning into her vehicle to the parking lot on the right where she parked her vehicle; and the passenger and the petitioner saw the other driver come from the opposite side of the street. He added his words and opinions to assist the other driver. He, again, failed to interview the passenger though the petitioner told him about her and that she had witnessed the accident. He said, the passenger could not be used as a witness as she is my mother. The petitioner told him about the inaccuracy in police reports and that she did not strike the other vehicle, and he said, "You didn't hit her car. She hit your car.", and that, "She just said that." This shows he was aware, she was not following the other driver, but he did not indicate this in his reports.

REASONS FOR GRANTING THE WRIT

I. The exclusion of minorities and persons of color from the jury based upon race, though it gives an appearance the exclusion was based upon facially neutral grounds and upon factors apart from race, deprives a racial minority of equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution when it exerts to discriminate against the minority.

During the jury selection,[6] the opposing counsel requested the Court that two minority jurors, an Asian and a Hispanic, to be excluded from the jury panel, claiming that they were leaning toward the petitioner and they were excluded from the panel.[7] The counsel's selection of the jury was racially biased [8]and he subjected the minorities to more searching questioning about the case than those who are not minorities. Specifically, in the case of the Asian juror, the petitioner's counsel stated to the Judge, the petitioner wanted the Asian juror, but the Judge excluded the juror from the panel, however. The respondent's counsel wanted the Asian juror to be excluded from the jury panel only because the petitioner is an Asian.[9] The petitioner was deprived of the equal

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[6] The regular jurors were Sarah Nelson, Addison Smith, John Wick, Josephine Lane, Dolores Spitzer, and Katherine Lobella. The alternates

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were Carol Pacella and William Cook. (9/17/02 Tr. p. 7-8). The jury selection was held on 9/13/02.

[7] The Court held, peremptory challenges to remove potential jurors based solely on presumed group bias may not be used in *People v. Wheeler*, 22 Cal. 3d 258, 272, 148 Cal. Rptr. 890, 583 P.2d 748 (1978); *People v. Trevino*, 39 Cal. 3d 667, 704 P.2d 719, 217 Cal. Rptr. 652 (1985). In *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991), the Court held, peremptory challenges based solely on discriminatory factors are barred. In *Williams v. Superior Court*, 49 Cal. 3d 736, 781 P.2d 537, 263 Cal. Rptr. 503 (1989), it was found, the Trial Court failed to apply correctly the test developed in *People v. Wheeler*. In *United States v. Northside Realty Associates*, 659 F.2d 590 (5th Cir. 1981), rev'd, 510 F. Supp. 668 (N.D. Ga. 1981), the Court dismissed the judgment of the grand jury as there was a substantial failure in the method by which the grand jury was selected.

[8] Excluding a juror because of race or color is unconstitutional. See *Neal v. Delaware*, 103 U.S. 370 (1881); *Bush v. Kentucky*, 107 U.S. 110 (1883). See also *Duren v. Missouri*, 439 U.S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979) (the under representation is due to the systematic exclusion of the group (women) from the jury; *People v. Trevino*, 39 Cal. 3d 667, 704 P.2d 719, 217 Cal. Rptr. 652 (1985) (the under representation is due to the systematic exclusion of a cognizable group).

[9] In *Carter v. State of Texas*, 177 U.S. 442 (1990), the Court reversed the judgment and remanded the case for further proceedings because *Carter* was denied the equal protection of law in the jury selection process as persons of his race were excluded from the jury. See *Whitus v.*

protection of the laws entitled by the Constitution because the minority jurors were excluded when they were qualified to serve as jurors apart from their race.[10] The Court held, one is entitled to a fair and an impartial jury drawn from a representative cross-section of the community in *Duncan v. Louisiana*, 391 U.S. 145, 149, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968); *Ristaino v. Ross*, 424 U.S. 589, 96 S. Ct. 1017, 47 L. Ed. 2d 258 (1976); *Piehler v. Kansas City Public Service Co.*, 357 Mo. 866, 211 S.W.2d 459 (1948); *Lee v. Baltimore Hotel Co.*, 345 Mo. 458, 136 S.W.2d 695 (1939). (App. 87-97). In *Duren v. Missouri*, 439 U.S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979), the Court held, the jury must be selected arbitrary from a true cross-section of the population "of the area served by the court." The area where the trial was conducted and in the county, there were many minorities, but they were under represented for the trial.

The Court held, the law was unconstitutional (App. 87) as it violated the right to an impartial jury in *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Machetti v. Linahan*, 679 F.2d 236 (1982). In *Strauder v. West Virginia*, 100 U.S. 303

Georgia, 385 U.S. 545 (1967); *Norris v. State of Alabama*, 294 U.S. 587, 589-590 (1935); *Hernandez v. Texas*, 347 U.S. 475 (1954); *Avery v. Georgia*, 345 U.S. 559, 561 n. 2 (1953); *Glasser, v. United States*, 315 U.S. 60 (1942) (it was reversed and remanded in part and affirmed in part) (App. 97); See also *Pierre v. State of Louisiana*, 306 U.S. 354 (1939) (there was discrimination in the jury selection with the exclusion of people of the petitioner's race from the Grand Jury Venire and Panel and the case was remanded to the Supreme Court of Louisiana).

[10] The respondent showed she was one among the jurors when she turned to the jurors several times during her testimony and smiled at them to, further, sway the verdict in her favor. She was not present in the Court on the first day of the trial, but the petitioner and her mother were present. Yet, the verdict was rendered in favor of her, which indicates the jury could identify with her. The opposing counsel also smiled at one of the jurors when she handed over the accident report to him after all the jurors looked at the report to, further, sway the verdict in their favor, and his action toward the juror showed that he could identify with them.

(1880), the Court held, *Strauder* was entitled to an impartial jury and the selection of the jurors based on their color "is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." *Id.* at 303. In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Court reaffirmed the principle declared in *Strauder v. West Virginia*, 100 U.S. 303 (1880), that a defendant is denied equal protection when "members of his race have been purposefully excluded." (App. 87). In *Smith v. State of Texas*, 311 U.S. 128 (1940), there was racial discrimination in the jury selection and the judgment was reversed. (App. 91-92). In *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946), "a new trial by a jury drawn from a panel properly and fairly chosen" was required. *Id.* at 225. (App. 93-94).

II. A police officer should not be considered a reliable witness to the accident and his testimony be given greater weight than the testimony of the witness to the accident when he had improperly exercised his authority depriving one of due process rights and equal rights protection.

Some of the statements made in the accident report showing as the petitioner made the statements were actually said by the respondent and made by the officer, himself, and some of the statements in the narrative supplement were actually made by the officer. The opinions in the accident report and the narrative supplement are that of the officer.

After his private conversation in the parking lot with the respondent, he gave the petitioner a summons when she waited for him to finish his long conversation with the other driver to explain her version as the officer did not give her an opportunity to explain as he was interfering and arguing with her in support of the other driver.[11] He said when he gave the summons to her it was because she was arguing with him when she was merely explaining her version -- the summons does not show it was for arguing, it shows for "following too close". The First Amendment protects challenges directed at the police officer. *Gulliford v. Pierce County*, 136 F.3d 1345 (9th Cir. 1998); *City of Houston, Texas v. Hill*, 482 U.S. 451, 461-463 (1987); *Terminiello v. Chicago*, 337 U.S. 1, 4 1949); *Lewis v. City of New Orleans*, 415 U.S. 130, 132-134 (1974). (App. 98). "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *City of Houston, Texas v. Hill*, 482 U.S. 451, 462-463 (1987).

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[11] Though a report is generally admissible under the General Statutes § 52-180, everything contained in the report do not have to be admitted

The officer spoke to the respondent, first, and got her version. (9/17/02 Tr. p. 71-72). He testified, the respondent's vehicle was not in the entrance of the driveway when he arrived at the scene. (9/18/02 Tr. p. 114). He admitted, his diagram was based upon what the respondent had told him. (Id. p. 114, line 11). He admitted, his diagram was not based on what he saw at the scene. (Id. p. 115-116).[12] He admitted, he made an error about the damage of both vehicles in the narrative supplement. (Id. p. 117-118). She admitted, he did not spend time getting the details of the accident from the petitioner -- "I wouldn't call it an interview. He spoke to her. I don't know." (Id. 36, line 14-15). She testified, the petitioner and her mother were interviewed "just briefly. That wasn't an interview per se." (Id. p. 37, line 13-16). The respondent admitted, he had further discussion with her in the parking lot (9/18/02 Tr. p. 36, line 20-27 and p. 37, line

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into evidence. *General Motors Acceptance Corporation v. Capitol Garage, Inc.*, 154 Conn. 593, 597, 227 A.2d 548 (1967). The statements contained in the police accident report may not be admitted for truth of matters unless the statements qualify as admissions under § 52-180. *State v. Palozie*, 165 Conn. 288, 295, 334 A.2d 468 (1973).

[12] The respondent moved her vehicle to the parking lot. Hence, the officer took the respondent's word for granted without corroboration.

1-2), but she "don't see that as a private conversation" though the petitioner and her mother were not there with her. (Dep. Tr.[13] p. 24). Both for the accident report and the narrative supplement, he omitted the details which the petitioner told him, and he ignored exculpatory evidence at the scene. An officer is required to conduct a reasonably thorough investigation and may not ignore exculpatory evidence. *Kuehl v. Burtis*, 173 F.3d 646 (8th Cir. 1999). He could have cited the respondent for driving with a broken wind-shield and for not wearing her glasses, but he did not that. The accident report does not state all parts of both vehicles that were damaged like he was concealing the extent of the damage to be helpful to only one party.

He testified, the petitioner told him the she was driving in the right-hand lane", so he got the impression that she was driving in the shoulder.[14] (9/18/02 Tr. p. 107-108). He testified, the respondent said, "[s]he was traveling down the road, attempted to make a right-hand turn into the Ethan Allen driveway, and was struck by another vehicle." (9/18/02 Tr. p. 108). [15] He testified, the petitioner told him, she saw the respondent's vehicle only upon impact. (Id. p.108).[16] He testified, nobody at the scene told him, the respondent came from the opposite direction. (Id.).[17] He said, the narrative supplement was done after the petitioner contacted the police department about the initial report. (Id. p. 111). In *Sevigny v. Dicksey*, 846 F.2d 953, 957-959 (4th Cir. 1988), the Court held, the officer should have done further investigation to uncover the true course of the events. In *BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986), the Court held, "A police officer may not close his or her eyes to facts that would help clarify the circumstances of an arrest."

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[13] Dep. Tr. refers to the deposition transcript.

[14] This statement is false. He omitted from the police accident report that the petitioner told him, the respondent took a left-turn. However, the report also does not show the petitioner stating, she was driving in the right-hand lane. In fact, the report clearly shows the petitioner could not have made such a statement when she used the word "left" and the impact pushed the vehicle to the shoulder of the road. "Any testimony in a case that tends of itself or in connection with other testimony to influence the result on a fact in issue is material. If the testimony would tend to affect the verdict of the jury, it meets the test of materiality." Berndston v. Annino, 177 Conn. 41, 45, 411 A.2d 36 (1979).

[15] This statement is false. The petitioner, repeatedly, told him at the accident scene, she was not driving in the shoulder and the impact pushed her vehicle to the shoulder. This fact was omitted from the accident report, and in fact, the report shows her as not understanding that she was

In 2002, the economic cost of traffic crashes was estimated to be $230.6 billion. (App. 74). Motor vehicle accident affects all people. (App. 70-77). People should be able to depend upon the police to do a fair account of the accident. Hence, the accident report should be reliable, and it is important that the police do the work properly.

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driving in the shoulder, which shows he accepted the respondent's version and wrote what she had told him. He admitted, "Physically, a car couldn't travel on this shoulder if it is very wide." (9/18/02 Tr. p. 121). The respondent testified, she had used her right-hand turn signal, but she did not. The petitioner told him, repeatedly, the other driver struck her vehicle, but the report shows the petitioner insisting her vehicle was struck and not that the other driver struck her vehicle. (App. 35).

[16] This statement is false. The respondent told the officer, repeatedly, she did not see the petitioner's vehicle and she saw the vehicle only upon impact. However, the report, incorrectly, shows the petitioner as not knowing the other driver was present until the impact. The respondent testified, she could see through the broken wind-shield, but the broken windshield would have obscured her view on a rainy and somewhat foggy day. She was also not wearing her glasses at the time of the accident though she testified she was wearing that.

[17] This statement is false. On the other hand, he said, the petitioner told him, the respondent turned in front of her vehicle, striking her vehicle and also testified that a vehicle cannot travel in the shoulder if is very wide and that there was only a single lane of traffic at the location in question.

III. The Trial Court, the Appellate Court, and the Connecticut Supreme Court violated the petitioner's guaranteed rights of due process and equal protection by deviating from the accepted standard of proof, by disregarding the rules of evidence, by basing the facts upon no probative value, and by accepting testimony deficient in any relevant evidence as to the essential element of the case in the light of the evidence proffered by the petitioner.

During the trial, the issue was raised, the shoulder of the road in that area could not be traversed by a vehicle as it was blocked by a cement curb at the driveway which prevents the petitioner from the entering the driveway and striking the respondent's vehicle.[18] (9/17/02 Tr. p. 75-77). The Trial Judge overlooked this fact or did not find it. *Gutowski v. New Britain*, 165 Conn. 50, 56-57, 327 A.2d 552, 556 (1973). (App. 60). The outcome of the trial was affected by improperly admitted evidence on the crucial points. Hence, the admission constituted harmful error.[19] In *Weisgram v.*

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[18] The petitioner had not reached the driveway yet (9/17/02 Tr. p. 66) and she testified, the accident did not take place at the driveway, but away from the driveway, well before the respondent began to turn into the driveway. (9/17/02 Tr. p. 66, 78).

[19] A record having "no evidence" or lacking in evidence, or any evidence, or any relevant evidence in support of the charge violates due process -- *Johnson v. Florida*, 391 U.S. 596, 598 (1968); *Thompson v. Louisville*, 362 U.S. 199, 200, 204, 206 (1960); *Vachon v. New Hampshire*, 414 U.S. 478, 480 (1974); *Harris v. United States*, 404 U.S. 1232 (1971). The Supreme Court had corrected the findings of facts in *re Williamson's Estate*, 123 Conn. 424, 429-434, 196 A. 770, 772-774 (1937); *Reboul v. Chalker*, 27 Conn. 114 (1858). In *Lessee v. Hynson*, 1 H. & McH. 84 (Md. Prov. Ct. 1734), the Court set aside the verdict and ordered a new trial as the verdict was based on an erroneous conclusion of law to its factual findings. In *re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238, 304 (3rd Cir. 1983), rev'd on other grounds, *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986), the Court held, the "Court of Appeals did not apply the proper standards in evaluating the District

Marley Co., 120 S. Ct. 1011 (2000), the Eight Circuit panel held, *Marley's* motion for judgment should be granted as a matter of law because the testimony of *Weisgram's* eye witnesses was speculative and therefore was ineffectual to prove the plaintiff's case. The Court, next, considered the other evidence in the light most favorable to *Weisgram* and found it inadequate to support the jury verdict and directed judgment as a matter of law for *Marley.* In *Wilkerson v. McCarthy*, 336 U.S. 53 (1949), the Supreme Court reversed the judgment of the Supreme Court of Utah which affirmed the jury verdict in favor of the respondent at the Trial Court in "its finding of an absence of negligence on the part of the railroad" (*Id.* at 55) for the injuries the petitioner sustained as an employee of the respondent and remanded the case for further action. The Trial Judge questioned the petitioner about the shoulder (Id. p. 97, line 17-27, p. 98, line1-17). On recross examination, the Trial Judge questioned the officer about the shoulder, but the Judge did not question him about the curb at the driveway. (9/18/02 Tr. p. 121). Similarly, the Trial Judge did not question the respondent about the curb at the driveway. At the charging conference, the Trial Judge stated about the shoulder, but there was no mention about the curb at the driveway. (9/18/02 Tr. p. 134). Even for the charge, the Trial Judge stated about the shoulder marking on the road, "[t]he shoulder marking, at least we had evidence…." (9/18/02 Tr. p. 166, line 14-16), but there was no mention about the curb at the driveway which prevents one from entering the driveway.[20]

Court's decision to grant petitioners' motion for summary judgment." *Id.* at 574. The Court noted, a judgment supported by an ambiguous evidence as to an essential element violates due process.

[20] In *Atchison, Topeka & Santa Fe Ry. Co. v. Hicks*, 258 P.2d 672 (Okla. 1953), the Court held, "It is the duty of the trial court on its own motion to properly instruct the jury upon decisive issues made by the pleadings and the evidence introduced at the trial and the failure so to do constitutes fundamental error." Hence, the Court reversed the case "with directions to grant the defendant a new trial". In *Riley v. Connecticut*

The petitioner stated at the Trial when she was questioned about the responses that she gave at the deposition that it was not what she said though the transcript shows otherwise when she did not make such responses at the deposition (9/17/02 Tr. p. 91-92), and this position affected her when she said that the transcript was not transcribed in the manner she said at her deposition. The Trial Court in its charge to the jury stated, if any witness had testified contrary to what was said before, that party's credibility would be affected adversely. This charge to the jury affected her case. (App. 65-66). The petitioner's counsel brought up about the transcript to the Trial Judge. (9/17/02 Tr. p. 94). The Trial Court was aware of the complaints about the transcript as another deposition was ordered to be taken.

The brief raised two charges for a plain error review. "So, you folks never have to worry about doing the right thing. If your verdict is accepted by the Court, it is the correct verdict and it can never be over put – changed. The verdict is never changed." (9/17/02 Tr. p. 9-10). In its final charge, the Court restated this erroneous instruction. "As I said to you when you were first sworn in, you always do the right thing. You don't worry about whether you did the wrong thing, so don't

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Company, 129 Conn. 554 (1943), the Court held, when the omitted instructions are critical for a complete and proper decision of the case, the failure to include them is an error, even though the point was not called to the Court's attention by a written request to charge. In *Elliot v. Sears, Roebuck & Co.*, 30 Conn. App. 664, 674 (1993), the Court held, it is very important for the Trial Court in its instruction to the jury to refer to the evidence so that they can apply the law correctly to the facts they might find to be established. It is the clear duty of the Court to instruct the jury on material and important features of the case, even in the absence of a request. *Seeley v. Litchfield*, 49 Conn. 134, 138 (1881). "The test of a court's charge… [is] whether it fairly presents the case to the jury in a such a way that injustice is not done to either party under the established rules of law…. [T]he trial court must correctly adapt the law to the case in question and must provide the jury with sufficient guidance in reaching a correct verdict." *Barrett v. Hebrew Home & Hospital, Inc.*, 73 Conn. App. 327, 332, 807 A.2d 1075 (2002).

worry about that." (9/18/02 Tr. p. 158). No exception was taken to the two charges which are plain and prejudicial error, but only one of them was ruled by the Appellate Court. Further, the Court overlooked each charge is to be read as a whole in the context of the 32 pages (not 31 pages, p. 157-188) of the Court's entire charge to the jury as printed in a separate appendix to the brief. There is not anything in that charge which cures the manifest error, noted above, of telling the jurors, they could do whatever they wanted with the assurance, they did not have to worry about the effect.[21] The brief also raised the issue, the Trial Court Judge held at the charging conference, the failure to yield right of way and the failure to have the turn signal activated at least 100 feet before the point at which a turn would be made would not be charged to the jury. (9/18/02 Tr. p. 126-141). The facts of her case warranted these charges to be included. In *Foss v. Russo,* 156 Conn. 230, 232-233 (1968), the Court reversed on appeal, holding that the facts of the case warranted the charges excepted to, even in the absence of a request to charge. Her counsel pointed out that the accident report, which was offered as evidence by the respondent, contained evidence about the distance from the red light to the Ethan Allen driveway, which would warrant giving the charge for the turn signal, but the Court adhered to its prior ruling. The brief also raised, the statutory provisions involved. The brief raised the issue about the respondent's inability to recall many details of the accident and her evasiveness about them, and that this shows she was an unreliable witness and might have improper motive and intent. These issues were raised in the Petition that the Appellate Court overlooked these issues and did not address them. (App. 59-64).

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[21] The error in the charge "resulted in an unreliable verdict or a miscarriage of justice." *State v. Hinckley*, 198 Conn. 77, 88, 502 A.2d 388 (1985). In *Smith v. Czescel*, 12 Conn. App. 558, 562-563, cert. denied, 206 Conn. 803 (1987), the plaintiffs' unpreserved claims qualified for review under the plain error doctrine without filing a request to charge and without taking an exception to the charge about their claims of error. "The whole charge must be considered from the standpoint of its effect on the jurors in guiding them to a proper verdict." *Sevigny v. Dibble Hollow Condominium Assn., Inc.*, 76 Conn. App. 306, 311, 819 A.2d 844 (2003).

Throughout the case from the jury selection till the end of the trial, the opposing counsel made prejudicial comments against the petitioner which affected the verdict. (App. 101). His introductory comments to the jurors during the selection process was prejudicial in that he said, they were denying his client caused the accident, they were denying the petitioner was hurt, and they were denying the petitioner, payment, and these comments affected the verdict. He also made improper closing comment, "And on behalf of Ms. Dux, I suggest and request that you render a verdict in favor of her of zero percent negligence." (9/18/02 Tr. p. 155, line 16-19), and the jury did exactly as he requested. (See App. 78-85). The respondent's version was inconsistent with the photographs (Defendant's Exhibit B1 and B2) that was produced at the Trial, which shows only a very slight damage at the lower part of the right rear of her vehicle.[22] The respondent's counsel produced a photograph of the damage on her vehicle, which was not a depiction of the actual damage. He handed this photograph to the jury to view, but her counsel did not show this photograph to the petitioner at the Trial. Hence, she was not given the opportunity to comment about the accuracy of the photograph depicting the damage on the vehicle.[23] The photograph also did not show the prior damage of the windshield that she had at the time of the accident. Such omission was done to with the intent to misrepresent and mislead the jury to conceal the extent of damage on her vehicle. The respondent's version was also inconsistent with the damage sustained by the petitioner's vehicle. The respondent's counsel presented the accident report[24] and the narrative supplement to the jury, which prejudiced the petitioner's case. The Trial Court and the jury accepted these reports and the officer's testimony when it constituted inadmissible hearsay, being speculative. The Trial Court erred in admitting into evidence these reports.[25]

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[22] Only a vehicle making a turn could strike another vehicle traveling straight down the road. See Fonck v. Stratford, 24 Conn App. 1, 3, 584 A.2d 1198 (1991). (App. 101).

[23] In *Gardner v. Florida*, 430 U.S. 349 (1977), the Supreme Court vacated and remanded the case as the Court found the due process of law was violated, at least in part, when the petitioner had no opportunity to deny or explain the portions of information which were not disclosed to or requested by counsels for the parties. In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Supreme Court reversed the decision and remanded the case to the Court of Appeals for further proceedings as the Court found,

The Petition of Certification raised the issue, the Appellate Court would not consider the review of the petitioner's claim of the cost to repair her vehicle when the issue was sufficiently raised on the record to warrant review on appeal,[26] and the Court would not consider whether the plain error review would be warranted when the issue was sufficiently raised in the brief, the Trial Court "erred" in

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the petitioners were deprived of due process as the parole revocation required "an informal hearing to give assurance that the finding of a parole violation is based on verified facts to support the revocation." *Id.* at 471. In *Walker, Inc. v. Food Machinery*, 328 U.S. 172 (1965), the Supreme Court reversed the decision and remanded the case to the Trial Court to "allow petitioner to clarify and offer proof on the alleged violations of 2." *Id.* at 172.

[24] It has been about six and a half years from the time of the accident to the trial and the respondent was unable to provide a single accident diagram, and she relied upon the police accident diagram like it is the true rendition of the accident when the officer was not there when the collision occurred and she moved her vehicle to the perking lot, and the officer did not observe the location of the petitioner's vehicle carefully.

[25] A verdict should set aside if a harmful error was made in admitting or excluding evidence -- *Ardoline v. Keegan*, 140 Conn. 522 (1954); In re Japanese Electronic Products Antitrust Litigation, 631 F.2d 1069 (1980).

excluding this claim as it was an essential element to prove her stand of the speed the respondent was traveling. (App. 59, question II).[27] The Petition raised the issue, her claim of the repair cost for the damage was relevant to the liability phase because the evidence was not presented on the issue of damages as it is a personal injury case and not a property damage case and she was not attempting to bring up the extent of her injuries and cost related to her injuries, but only that relating to her vehicle. Therefore, the Court's ruling was erroneous as the claim would have provided circumstantial evidence to show the respondent was speeding – the extent of the physical damage on the vehicle and the repair cost for it would provide circumstantial evidence of the speed the respondent was traveling.[28] The Petition raised the issue,

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[26] In *Cahill v. Board of Education*, 187 Conn. 94, 99, 444 A.2d 907 (1982), the Court considered a claim, not raised in the Trial Court.

[27] In *Nielsen v. Kezer*, 232 Conn. 65, 73, note 15, 652 A.2d 1013, 1018, note 15 (1995), the Court reversed the issue, not properly preserved with a plain error review. The Court noticed the plain error in instruction, not brought to the Court's attention at the Trial in *United States v. Ward*, 168 F.2d 226, 228 (2d Cir. 1948); *Robertson v. United States*, 171 F.2d 345 (D.C. Cir. 1948). In *Jones v. United States*, 175 F.2d 544 (9th Cir. 1949), the Court of Appeals held, it was the duty of the Court to notice a plain error "though not assigned as error." *Id.* at 544. "Err" is "To make an error; to be incorrect or mistaken." *Black's Law Dictionary*, p. 562 (7th ed. 1999). "Plain error" is "An error that is so obvious and prejudicial that an appellate court should address it despite the parties' failure to raise a proper objection. A plain error is often said to be so obvious and substantial that failure to correct it would infringe a party's due-process rights and damage the integrity of the judicial process." *Id.* at 563.

[28] In *Daigle v. United States*, 181 F.2d 311, 313 (1st Cir. 1950), the Appellate Court considered the instruction not objected to below. In *United States v. Cumberland*, 200 F.2d 609 (3rd Cir. 1952), the Court reversed the judgment for errors not objected to at the Trial. In *Lazarov v. United States*, 225 F.2d 319, 329 (6th Cir. 1955), the Court held, "No exception was taken to the instruction but, of course, an appellate court will consider an error in the charge which is seriously prejudicial or amounts to a grave miscarriage of justice even though no objection was made in the trial court." In *Remmer v. United States*, 205 F.2d 277, 290,

during the Trial, she was asked by her counsel, "Do you recall what the damage estimate was to repair these areas?" to which she responded, "Yes.". *Menon v. Dux*, 81 Conn. App. 167, 175 (2004). The Appellate Court held, the petitioner did not articulate any evidentiary rule on which such testimony was admissible (Id. at 171) when her counsel's question did not require an articulation which would have an evidentiary rule. If she was expected to articulate any evidentiary rule on which such testimony was admissible, the petitioner's counsel should have asked a question like, "What was the damage estimate to repair these areas?" or "What do you recall of the damage estimate to repair these areas?" and to which she would have articulated more than a "yes". It should be noted, the respondent's counsel raised an objection only after she had responded to the question asked and not after her counsel asked the question. The fact that he had raised his objection after she responded in the affirmative suggests, he might have improper motive or intent.

The Petition raised the issue, the Appellate Court used the accident report and the narrative supplement and the diagram as a guide as to how the accident occurred when the credibility of those materials should have been questioned though the police reports are admissible under the business records exception to hearsay. Rule 803(6) of the Uniform Rules of Evidence Act, Cf. Federal Rules of Evidence § 803(6), states such reports are hearsay exceptions "unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." In the reports, the petitioner's mother's presence was not noted (9/18/02 Tr. p. 147) and she was not interviewed (9/18/02 Tr. p. 84), and the respondent admitted, she was alone with the officer in the parking lot (Dep. Tr. p. 24). Hence, he reconstructed the

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note 16 (9th Cir.1953), the Court held, "Plain error in instructions should of course be noticed regardless of whether the matter was properly brought to the attention of the trial court."

accident considering only the respondent's version.[29] The Petition raised the issue, the Appellate Court overlooked and did not rule that the shoulder could not be traversed by a vehicle as there was a cement curb which blocked the driveway and prevents a driver from entering the driveway. "In sum, relevant evidence is evidence that in some degree advances the inquiry. It is material and probative." *McCormick on Evidence,* § 185, p. 544 (3d ed. 1984). It is axiomatic that "[e]vidence is admissible only to prove material facts, that is to say, those facts directly in issue or those probative of matters in issue; evidence offered to prove other facts is 'immaterial.'" C. Tait, *Connecticut Evidence,* § 4.1.3, p. 200 (3d ed. 2001), citing *Adams v. Way*, 32 Conn. 160, 167-69 (1864). *Salmon v. Dept. of Public* Health *& Addiction Services*, 788 A.2d 1199, 1216, 259 Conn. 288 (2002). For the Petition, some of the cases that she brought out was the *Hutchinson v. Plante*, 175 Conn. 1, 392 A.2d 488 (1978) which is it is an automobile negligence issue like her case in which both drivers offered conflicting versions of the accident. The Court found error in the case and set aside the judgment and ordered a new trial. The Court held, the officer's testimony was inadmissible in its entirety as the "trooper accepted and reported the defendant's operator's version of the event." *Id.* at 6-7, 392 A.2d at 491. The Court also held, the narrative and diagram contained in the report were inadmissible as business entries as they were self-serving hearsay as to respondent's version. (App. 102).

For the Motion for Reconsideration, the petitioner brought out cases, such as the *Adams v. Way*, 32 Conn 160 (1864), where the evidence was excluded and the plaintiff was entitled to a new trial. The Motion raised the issue, her claim of the repair cost was excluded when it is a personal injury case and not solely a property damage case and therefore, her claim for the repair cost was relevant to the liability phase as it was related to her vehicle and would have provided circumstantial evidence to show the speed at which the respondent's vehicle was traveling. The Motion raised the issue, just like the *Liimatta v. Vest* case and *Adams v. Way* case, her claim of the repair costs was critical in proving her version that the respondent came from the opposite direction when she made a sudden and unexpected left turn directly in front of her as the respondent's version did not explain the extent of physical damage to the petitioner's vehicle and by excluding this claim from the liability phase, she would not be able to prove her version or to substantiate her position that the respondent came from the opposite side of the street. The Motion raised the issue, in this case where both drivers had conflicting versions, her claim of the repair cost was a critical element of her version and she would almost never be able to prove her case by excluding this claim [30] -- the extent of the property damage would shed light on the question of the respondent's speed. In *State v. Golding*, 213 Conn. 233, 567 A.2d 823 (1989), the Court held, the "amount obtained by the defendant was essential element of crime of general assistance" and the "failure to inform jury that it had to find proven, beyond a reasonable doubt, amount defendant obtained by fraud was constitutional error." The Motion raised the issue, the Supreme Court reviewed *State v. Golding*, 567 A.2d 823 (1989) under *State v. Evans*, 165 Conn. 61, 327 A.2d 576 (1973). It raised the issue that like the *State v. Golding* case where the "amount obtained by defendant was essential element of crime of general assistance," her claim of the extent of the physical damage and the repair cost for it was an essential element in order to support her version, the other driver was speeding.

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[29] Business records may not be admitted for truth of matters stated. Such records bear no presumption of accuracy even when properly admitted and their credibility is a question for the trier of fact. *State v. Ward*, 172 Conn. 163, 170, 374 A.2d 168 (1976).

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[30] In *Anderson v. Atchison, T. & S. F. Ry. Co.*, 333 U.S. 821 (1948), the judgment was reversed and the case, remanded for further proceedings. The Supreme Court found, "had petitioner been permitted to introduce all evidence relevant under her allegations, the facts would have revealed a situation as to which a jury under appropriate instructions" would have rendered a decision in favor of the petitioner. *Id.* at 823.

The Trial Court Judge conveyed to the jury, there was an opportunity for an Appellate Court review and a review by the Supreme Court of Connecticut and, finally, "everybody in certain instances" (9/17/02 Tr. p. 10), could be reviewed by the Supreme Court in Washington or the Congress can make changes to the laws. (App. 67-69).[31] Though the Trial Judge, then, stated that the jury's verdict was final and an error could not be made, and the fact pattern could not be reviewed, and if the decision was accepted by the Court, it was the correct verdict and the verdict would never be changed, the Judge's comments about the reviews of the various Courts had given the jurors the impression, they did not have to be correct in their decision or sure of their decision as their decision and their responsibility for determining the case correctly and impartially was not important as it would be subjected to review by another to ensure its correctness and at the same time, the jurors might not be aware that the nature of review is a difficult and review is limited in nature as the determination is accepted with the presumption it is correct. (App. 99-101). For the Trial on September 17 and 18, 2002, the Judge stated several times about the Appellate Court and Hartford. (App. 67-69). The Judge also stated about mistrial and the Trial had to be started all over. (9/17/02 Tr. p. 16). (App. 67). It is should pointed out, though the respondent and petitioner presented conflicting versions, the jurors reached a verdict in a short time when they should have given more thought to the case.[32]

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[31] In *Caldwell v. Mississippi*, 472 U.S. 320 (1985), "the prosecutor urged the jury not to view itself as finally determining whether petitioner would die, because a death sentence would be reviewed for correctness by the Mississippi Supreme Court." *Id.* at 320. The petitioner failed to raise about the prosecutor's comments on appeal, but the Supreme Court reviewed it. The prosecutor's comments minimize the jurors' sense of duty as the "responsibility for determining the appropriateness of the defendant's death rests elsewhere." *Id.* at 320.

The Trial Court stated in its the charge, "[t]he defendant need not offer any evidence on the issue for the plaintiff" (9/18/02 Tr. p. 165) -- she need not have to offer evidence, so there should not have been two competing versions for the jury to determine which one was accurate as it is a violation of the due process of law and equal protection to the other. The Trial Court should submit no issue to the jury where no evidence was offered, or issue which was foreign to the facts in evidence, or issue where there was no support of the evidence. *Wolfe v. Rehbein*, 123 Conn. 110, 115 (1937). "It is established law that it is error for a court to submit to the jury an issue which is wholly unsupported by the evidence...." *Novak v. Anderson*, 178 Conn. 506, 423 A.2d 147 (1979).

CONCLUSION

For these reasons, the petitioner respectfully requests this Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

HEMA MENON
Petitioner
2 Spitzer Court
Norwalk, CT 06854
(203) 852-8168

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[32] The jurors were an unusual group of people who were unable to handle the case seriously, and they found the case and the situation amusing. Toward the end of the trial, some of the jurors had amusing expression on their faces and some of them were laughing as they were walking in and out of jury booth to the chamber and the foreperson who handed over the paper with the verdict had an amusing expression on his face like he was trying to control himself from laughing. Overall, the demeanor showed that the jurors did not have any respect for the Court.

APPENDIX A

SUPREME COURT

STATE OF CONNECTICUT

NO. AC 23563

HEMA MENON

v.

ANN DUX **: JUNE 9, 2004**

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 11, 2004, TO FILE LATE CERTIFICATION FOR PETITION BY SUPREME COURT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **GRANTED**.

BY THE COURT,

/s/ Michele T. Angers
CHIEF CLERK

NOTICE SENT: JUNE 10, 2004
HEMA MENON, PRO SE
CASSIDY, MAZZA & LEBLANC
CLERK, STAMFORD J.D. (CV98-0163276)
REPORTER OF JUDICIAL DECISIONS

439/031445

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-03-0389

Hema Menon
v.
Ann Dux

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (81 Conn. App. 167 [AC 23563]), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

Dated:6/9/04
Notice sent: June 10, 2004
Clerk, Superior Court, Stamford/Norwalk,
CV98 163276
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Hema Menon, pro se
Cassidy, Mazza & Leblanc

Hema Menon, pro se, in support of petition.

mkm

SUPREME COURT

STATE OF CONNECTICUT

NO. AC 23563

HEMA MENON

v.

ANN DUX **: JUNE 30, 2004**

ORDER

THE MOTION OF THE PLAINTIFF, FILED JUNE 21, 2004, FOR RECONSIDERATION OF THE DENIAL OF PETITION FOR CERTIFICATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **DENIED**.

BY THE COURT,

/s/ Michele T. Angers
CHIEF CLERK

NOTICE SENT: JUNE 30, 2004
HEMA MENON, PRO SE
CASSIDY, MAZZA & LEBLANC
HON. JOHN P. RYAN
CLERK, STAMFORD SUPERIOR COURT,
(CV98-0163276S)
REPORTER OF JUDICIAL DECISIONS

484/031491

APPENDIX B

Connecticut Appellate Decisions

Menon v. Dux, 81 Conn. App. 167 (2004)
838 A.2d 1038
HEMA MENON v. ANN DUX
(AC 23563)
Appellate Court of Connecticut

Schaller, McLachlan and Berdon, Js.

Syllabus

The plaintiff sought to recover damages for personal injuries she sustained as a result of the defendant's alleged negligence in connection with an automobile accident. The jury returned a verdict in favor of the defendant and the trial court rendered judgment rendered thereon, from which the plaintiff appealed to this court. Held:

1. This court declined to review the plaintiff's claim, raised for the first time on appeal, that the trial court, which had concluded that certain evidence concerning the cost of repairing the damage to the plaintiff's vehicle caused by the accident was relevant only to the damages phase of the trial, improperly excluded the evidence in the liability phase although it constituted circumstantial evidence of the speed at which the defendant's vehicle was traveling at the time of the accident; at trial, the plaintiff's counsel did not articulate any basis for permitting the evidence to be introduced in the liability phase, and he expressly acquiesced in that court's ruling excluding it.

2. The plaintiff's unpreserved challenge to the trial court's jury instructions concerning the jury's discretion in

reaching a verdict was unavailing and did not warrant plain error review, the plaintiff having failed to demonstrate that the alleged error in the instruction was so obvious that it affected the fairness and integrity of and public confidence in the judicial proceedings or that the failure to grant the requested relief would result in manifest injustice.

3. The trial court did not abuse its discretion in denying the plaintiff's motion to set aside the jury's verdict, which was supported by the evidence presented; the jury reasonably could have believed the defendant's version of the circumstances that led to the accident, which was consistent with the damage sustained by both vehicles and was supported by the testimony of the police officer who had responded to the scene.

Argued October 22, 2003

Officially released January 20, 2004

Procedural History

Action to recover damages for personal injuries sustained by the plaintiff as a result of the defendant's alleged negligence, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the jury before Ryan, J.; verdict for the defendant; thereafter, the court denied the plaintiff's motion to

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set aside the verdict, for a new trial and in arrest of judgment, and rendered judgment in accordance with the verdict, from which the plaintiff appealed to this court. Affirmed.

John R. Williams, for the appellant (plaintiff).

Kieran S. Cassidy, for the appellee (defendant).

Opinion

McLACHLAN, J.

This appeal rises out of a negligence action brought by the plaintiff, Hema Menon, for the alleged liability of the defendant, Ann Dux, in causing an automobile collision. The plaintiff challenges both the trial court's judgment in favor of the defendant, rendered after a jury verdict, and the court's subsequent denial of her motion to set aside the verdict. On appeal, the plaintiff claims that the court improperly (1) excluded certain testimony relating to the cost of repairing the damage to her vehicle as a result of the collision, (2) instructed the jury concerning its discretion in determining the verdict and (3) denied her motion to set aside the verdict. We affirm the judgment of the trial court.

Following the jury selection, the court bifurcated the trial into two phases, liability and damages. During their testimony in the liability phase, the plaintiff and defendant provided conflicting versions of the events leading to the accident, essentially offering competing accounts of the directions in which the vehicles were traveling and the manner in which the collision occurred. Officer Lawrence Frinton of the Danbury police department, who investigated the accident scene, also testified. In his original accident report, Frinton provided a diagram of the accident based on his conversations with the plaintiff and the defendant immediately following the accident, and on his observations of the scene. This diagram was consistent with the version of events

advanced by the defendant. Frinton's report also contained a narrative, however, which contained certain statements that contradicted the diagram and, in fact, supported the plaintiff's version of events. Frinton later filed a narrative supplement to the accident report in which he indicated that in his original report, he mistakenly described the position and directional movement of the defendant's vehicle. He clarified that this description was in error and that in his opinion, the collision had occurred in the manner described by the defendant. [fn1]

Following the conclusion of evidence in the liability phase, the jury returned a verdict in favor of the defendant. The plaintiff subsequently filed a motion to set aside the verdict, pursuant to Practice Book § 16-35, on the ground, inter alia, that verdict was contrary to the evidence. The motion was denied, and judgment was rendered in favor of the defendant. The plaintiff now appeals.

I

The plaintiff first claims that the court improperly excluded evidence concerning the cost of repairing the damage to her vehicle as a result of the collision. The court excluded that evidence on the ground that although it would be appropriate in the damages phase of the trial, it was irrelevant to the liability phase. The plaintiff asserts for the first time on appeal that this testimony should have been permitted as circumstantial evidence showing that at the time of the collision, the defendant's vehicle was traveling at a high rate of speed. We decline to review the claim.

The record reveals that on redirect examination, the plaintiff's counsel questioned the plaintiff about the
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damage to her vehicle. After the plaintiff explained the nature of the damage, counsel inquired as to the cost of repairing such damage. The defendant's counsel objected to that question on relevancy grounds and, in sustaining the objection, the court reasoned that because the testimony was relevant only to the issue of damages, it should be postponed until the damages phase of the trial. In response to the

court's determination, the plaintiff's counsel articulated no rationale for permitting the testimony or any objection to the court's ruling and, quite to the contrary, expressly acquiesced to the ruling.[fn2]

The plaintiff now asserts that the testimony should have been permitted because the extent of damage to her vehicle comprised circumstantial evidence of the speed at which the defendant's vehicle was traveling at the time of the collision. The plaintiff now maintains that because such testimony would have supported her argument that the defendant was speeding prior to the collision, the testimony was relevant to the issue of liability and, therefore, should have been permitted.

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It is well established that "[t]his court will not review issues of law that are raised for the first time on appeal....We have repeatedly held that this court will not consider claimed errors on the part of the trial court unless it appears on the record that the question was distinctly raised at trial and was ruled upon and decided by the court adversely to the appellant's claim." (Internal quotation marks omitted.) *Strouth v. Pools By Murphy & Sons, Inc.,* 79 Conn. App. 55, 62, 829 A.2d 102 (2003).

Although the plaintiff attempted to introduce testimony of the extent of the damage to her vehicle, she did not articulate any evidentiary rule on which such testimony was admissible. For this court now to consider her claim on the basis of a specific legal ground not raised during trial would "amount to trial by ambuscade, unfair both to the trial court and to the opposing party." (Internal quotation marks omitted.) *State v. Westberry,* 68 Conn. App. 622, 628 n. 3, 792 A.2d 154, cert. denied, 260 Conn. 923, 797 A.2d 519 (2002). Accordingly, we will not afford review to that unpreserved claim.[fn3]

II

The plaintiff next claims that the court improperly instructed the jury concerning its discretion in determining a verdict. Specifically, the plaintiff claims that the court's charge conveyed to the jury that it had unbridled discretion to disregard the law in reaching a verdict. The plaintiff concedes that she did not take exception to the jury charge at trial, and our review of the record reveals that she did not submit a written request to charge. Accordingly, the plaintiff's claim was
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not preserved for appellate review. See Practice Book § 16-20; *Pestey v. Cushman*, 259 Conn. 345, 372-73, 788 A.2d 496 (2002). [fn4] Nevertheless, a party may prevail on an unpreserved claim under the plain error doctrine if such review is affirmatively requested. See Practice Book § 60-5; *State v. Ramos*, 261 Conn. 156, 171, 801 A.2d 788 (2002). [fn5] As the plaintiff has requested plain error review, we must consider whether such review is warranted.

As we often have stated, "[p]lain error review is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings.... Plain error is a doctrine that should be invoked sparingly.... A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice.... Furthermore, even if the error is so apparent and review is afforded, the defendant cannot prevail on the basis of an error that lacks constitutional dimension unless he demonstrates that it likely affected the result of the trial." (Citation omitted; internal quotation marks omitted.) *State v. Thompson*, 71 Conn. App. 8, 12 n. 4, 799 A.2d 1126 (2002).

The plaintiff has failed to demonstrate that the court's instruction was so obviously erroneous that it affected the fairness and integrity of and public confidence in the judicial proceedings or that failure to grant the

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requested relief will result in manifest injustice. [fn6] See *id.* We accordingly conclude that plain error review is unwarranted.

III

The plaintiff last claims that the court improperly denied her motion to set aside the jury's verdict. Specifically, the plaintiff claims that the evidence adduced at trial demonstrated that the collision could not have occurred in the manner alleged by the defendant and subsequently accepted by the jury. We disagree.

"[T]he proper appellate standard of review when considering the action of a trial court granting or denying a motion to set aside a verdict and motion for a new trial… [is] the abuse of discretion standard…. In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling…. Reversal is required only where an abuse of discretion is manifest or where injustice appears to have been done….

"A court is empowered to set aside a jury verdict when, in the court's opinion, the verdict is contrary to the law or unsupported by the evidence…. A verdict should not be set aside, however, where it is apparent that there was some evidence on which the jury might reasonably have reached its conclusion…. In analyzing a sufficiency of the evidence claim, the test that we employ is whether, on the basis of the evidence before the jury, a reasonable and properly motivated jury could return the verdict that it did…. On appellate review,

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therefore, we will give the evidence the most favorable reasonable construction in support of the verdict to which it is entitled." (Internal quotation marks omitted.) *Carusillo v. Associated Women's Health Specialists, P.C.,* 79 Conn. App. 649, 653, 831 A.2d 255 (2003). "We do not… determine whether a conclusion different from the one reached could have been reached…. A verdict must stand if it is one that a jury reasonably could have returned and the trial court has accepted." (Internal quotation marks omitted.) *Arnone v. Enfield*, 79 Conn. App. 501, 506, 831 A.2d 260, cert. denied, 266 Conn. 932, A.2d (2003).

The pivotal issue in the plaintiff's claim is the conflicting testimony offered by the plaintiff and the defendant as to the circumstances leading to the collision. Although the plaintiff's testimony roundly contradicted that of the defendant, and the jury reasonably could have elected to believe the plaintiff and not the defendant, our task is not to determine whether a conclusion different from the one arrived at could have been reached, but rather to determine if there was some evidence on which the jury might reasonably have reached its conclusion. See *Carusillo v. Associated Women's Health Specialists, P.C.,* supra 79 Conn. App. 653.

Although it was not supported by the entire record, the version of events advanced by the defendant and accepted by the jury was adequately supported by the record. Not only was the defendant's version consistent with the damage sustained by both vehicles, it also was bolstered by Frinton's testimony that in his opinion, the accident occurred in the manner described by the defendant. We accordingly conclude that the jury's verdict was not contrary to the evidence and the court did not abuse its discretion in denying the plaintiff's motion to set aside the verdict.

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The judgment is affirmed.

In this opinion the other judges concurred.

[fn1] Also testifying at trial was the plaintiff's mother, a passenger in the plaintiff's vehicle. With respect to the circumstances surrounding the collision, her testimony essentially mirrored that of the plaintiff.

[fn2] The following colloquy occurred during redirect examination of the plaintiff:

"[Plaintiff's Counsel]: Do your recall what the damage estimate was to repair these areas?

"[Witness]: Yes.

"[Defendant's Counsel]: Objection. That's irrelevant, Your Honor.

"The Court: At the present time in the status of the record, I have to sustain the objection.

"[Plaintiff's Counsel]: I'm merely offering it –

"The Court: It would be relevant to the question of the force of the collision –

"[Plaintiff's Counsel]: Yes.

"The Court: -- which, that may become a question relevant as to the nature and extent of the damages. But seeing that we're in a bifurcated trial, I don't think it's really relevant now as to the extent of the damage. It's conceded that both vehicles came into contact, and, of course, there was a picture that showed damage to the front of the car.

"[Plaintiff's Counsel]: Okay.

"The Court: So, for right now, why don't we just postpone that?

"[Plaintiff's Counsel]: All right."

[fn3] We note that the plaintiff did not seek review of the unpreserved ground under the rubric of plain error. As we have consistently stated, "it is not appropriate to engage in a level of review that is not requested." *State v. Hermann*, 38 Conn. App. 56, 65, 658 A.2d 148, cert. denied, 235 Conn. 903, 665 A.2d 904 (1995). We therefore do not consider whether review of the claim is warranted under the plain error doctrine.

[fn4] Practice Book § 42-16 provides in relevant part: "An appellate court shall not be bound to consider error as to the giving of, or the failure to give, an instruction unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered…."

[fn5] Practice Book § 60-5 provides in relevant part: "The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court…."

[fn6] The specific portion of the jury instruction to which the plaintiff objects states: "As I said to you when you were first sworn in, you always do the right thing. You don't have to worry about whether you did the wrong thing, so don't worry about that." That one sentence, considered in the context of the court's thirty-one pages of instruction, does not rise to the level of the truly extraordinary situation for which we reserve plain error review.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. 14:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE OF CONNECTICUT

OFFICE OF THE CLERK

SUPERIOR COURT

GA 03 COURTHOUSE
146 WHITE STREET
DANBURY, CT 06810 6853

June 19, 1996

HEMA MENON
29 JUDITH DR
DANBURY, CT

Docket Number: D03D-MI96-3742861-S
Summons Number: 374286
Date of Summons: 02/20/1996

STATE OF CONNECTICUT

V.

HEMA MENON

YOU ARE HEREBY NOTIFIED THAT: On 06/17/1996, A NOLLE PROSEQUI WAS ENTERED BY THE PROSECUTING AUTHORITY (Pr. Bk. 724)

This notice means that the case shown above pending against you has been disposed. You are NOT REQUIRED to appear in court or pay any fines, fees, costs, or surcharges which may have been applicable if you had been found guilty of this offense. The Department of Motor Vehicles or the appropriate Arresting Agency will be notified of this disposition by the court.

Office of the Clerk

Ret. Date: February 3, 1998 : Superior Court

Hema Menon : J.D. of Stamford/Norwalk

v. : at Stamford

Ann Dux : January 5, 1998

COMPLAINT

1. On or about February 20, 1996, the plaintiff, Hema Menon was the owner and operator of a 1991 Ford Escort which was proceeding in an easterly direction on Lake Avenue Extension, a public highway in Danbury, Connecticut.

2. The defendant, Ann Dux was the owner and operator of a 1989 Ford, traveling in a westerly direction on Lake Avenue Extension, a public highway in Danbury, Connecticut.

3. On said date the defendant, Ann Dux drove her vehicle so as to collide with the vehicle of the plaintiff thereby greatly damaging the vehicle of the plaintiff and causing her painful and permanent injuries.

4. Said collision was caused by the carelessness and negligence of the defendant, Ann Dux, in that she:
a) operated said vehicle at too fast and excessive a rate of speed for the time and place and the circumstances then and there existing.
b) failed to maintain a proper lookout
c) failed to yield right of way in violation of CGS §14-247
d) failed to keep said vehicle under reasonable and proper control
e) made an improper turn in violation of CGS §14-242

f) operated said vehicle as to endanger the life, limb and property of persons lawfully on the highway.

Wherefore, the plaintiff claims damages.

The Plaintiff

By /s/ Christine B. O'Sullivan
Christine B. O'Sullivan
Her Attorney

Amount in Demand

The amount in demand is greater than $15,000.00.

By /s/ Christine B. O' Sullivan
Christine B. O'Sullivan
Plaintiff's Attorney

D.N. CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D.
STAMFORD/NORWALK

VS. : AT STAMFORD

ANN DUX : MARCH 11, 1998

AMENDED COMPLAINT

The Plaintiff, Hema Menon, amends Paragraph 3 of her Complaint as follows:

3. On said date the defendant, Ann Dux drove her vehicle so as to collide with the vehicle of the plaintiff thereby greatly damaging the vehicle of the plaintiff and causing her painful and permanent injuries, including the injuries to her neck, spine, shoulder, arms and back, as well as internal injuries and nerve damage.

THE PLAINTIFF

By /s/ Christine B. O' Sullivan
Christine B. O'Sullivan
Her Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was mailed on March 11, 1998, to:
Brendan P. Donahue, Esquire, Schwartz & Cassidy, 1375 Kings Highway East, Suite 475, Fairfield, CT 06430

/s/ Christine B. O'Sullivan
Christine B. O'Sullivan
Commissioner of the
Superior Court

D.N: CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D.
STAMFORD/NORWALK

VS. : AT STAMFORD

ANN DUX : MARCH 31, 1998

SECOND AMENDED COMPLAINT

The Plaintiff, Hema Menon, amends Paragraph 3 of her Complaint as follows:

3. On said date the defendant, Ann Dux drove her vehicle so as to collide with the vehicle of the plaintiff thereby greatly damaging the vehicle of the plaintiff and causing her painful and permanent injuries, including the injuries to her neck, spine, shoulder, arms, back and legs, as well as internal injuries and nerve damage.

THE PLAINTIFF

By /s/ Christine B. O' Sullivan
Christine B. O'Sullivan
Her Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was mailed on March 31, 1998, to:
Brendan P. Donahue, Esquire, Schwartz & Cassidy, 1375 Kings Highway East, Suite 475, Fairfield, CT 06430

/s/ Christine B. O'Sullivan
Christine B. O'Sullivan
Commissioner of the
Superior Court

D.N. CV 98 0163276 S : SUPERIOR COURT

HEMA MENON : J.D. OF
STAMFORD/NORWALK

VS. : AT STAMFORD

ANN DUX : MARCH 20, 1998

ANSWER AND SPECIAL DEFENSES

1-2. With respect to the 'allegations referred to in Paragraphs 1 and 2, the Defendant has insufficient knowledge to form a belief as to the truth and, therefore, leaves the Plaintiff to her proof.

3-4. Paragraphs 3 and 4 are denied.

BY WAY OF SPECIAL DEFENSE:

Any damages to the plaintiff in this action were actually and proximately caused by her own negligence in one or more of the following ways:

a. in that the plaintiff failed to keep a proper and reasonable lookout for other motor vehicles upon the highway;

b. in that the plaintiff failed to keep proper and reasonable control of her vehicle;

c. in that the plaintiff failed to act as a reasonable and prudent person under all circumstances and conditions then and there existing;

d. in that the plaintiff failed to apply her brakes in a timely manner so as to avoid the accident from occurring although by a proper and reasonable exercise of her faculties, she could and should have done so;

e. in that the plaintiff failed to turn her motor vehicle to the left or right so as to avoid a collision, although by a proper and reasonable exercise of her faculties she could and should have done so;

f. in that the plaintiff operated her vehicle at an unreasonable rate of speed in violation of Connecticut General Statutes § 14-218a;

g. in that the plaintiff failed to comply with Connecticut General Statutes § 14-236 by failing to remain in her designated lane of travel;

h. in that the plaintiff failed to yield the right of way as required by Connecticut General Statutes § 14-242 (e), § 14-245 and § 14-246a;

i. in that the plaintiff was operating her vehicle at an excessive rate of speed with regard to the weather conditions that existed on the highway;

j. in that the plaintiff operated her vehicle at an unreasonable and excessive rate of speed having due regard for the traffic, weather, width and use of the highway and intersection of streets.

THE DEFENDANT
ANN DUX

By /s/ Brendan P. Donahue
Brendan P. Donahue

SCHWARTZ & CASSIDY
1375 Kings Highway East
Suite 475
Fairfield, CT 06430
Juris No. 408555
(203) 331-1505

CERTIFICATION

This is to certify that a copy of the foregoing was mailed on March 20, 1998 to:
Christine B. O'Sullivan, Esq., 13 Hermit Lane, Westport, CT 06880.

/s/ Brendan P. Donahue
Brendan P. Donahue

D.N. CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D. STAMFORD/NORWALK

VS. : AT STAMFORD

ANN DUX : APRIL 20, 1999

REPLY TO SPECIAL DEFENSES

The allegations contained in the Defendant's Special Defense a. thru j. are denied.

THE PLAINTIFF

By /s/ Christine B. O' Sullivan
Christine B. O'Sullivan
Her Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid on April 10, 1999, to:

Brendan P. Donahue, Esquire
Schwartz & Cassidy
1375 Kings Highway East – Suite 475
Fairfield, CT 06430

/s/ Christine B. O' Sullivan
Christine B. O'Sullivan

NO. CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D. DIST. OF STAMFORD

VS. : AT STAMFORD

ANN DUX : SEPTEMBER 28, 2002

MOTION TO SET ASIDE VERDICT

The plaintiff respectfully moves, pursuant to Section 16-35 of the Practice Book, to set aside the verdict in this case for the following reasons:

1. The verdict was contrary to the evidence.
2. The jury was selected in a manner which improperly excluded minorities and persons of color.
3. Evidentiary rulings during the trial were erroneous.

THE PLAINTIFF

BY: /s/ John R. Williams
John R. Williams (#67962)
51 Elm Street
New Haven, CT 06510
203.562.9931
Fax: 203.776.9494
E-Mail: jrw@johnrwilliams.com
Plaintiff's Attorney

ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED

NO. CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D. DIST. OF STAMFORD

VS. : AT STAMFORD

ANN DUX : SEPTEMBER 28, 2002

MOTION FOR NEW TRIAL

The plaintiff respectfully moves, pursuant to Section16-35 of the Practice Book, to set aside the verdict in this case for the following reasons:

1. The verdict was contrary to the evidence.
2. The jury was selected in a manner which improperly excluded minorities and persons of color.
3. Evidentiary rulings during the trial were erroneous.

THE PLAINTIFF

BY: /s/ John R. Williams
John R. Williams (#67962)
51 Elm Street
New Haven, CT 06510
203.562.9931
Fax: 203.776.9494
E-Mail: jrw@johnrwilliams.com
Plaintiff's Attorney

ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED

NO. CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D. DIST. OF STAMFORD

VS. : AT STAMFORD

ANN DUX : SEPTEMBER 28, 2002

MOTION IN ARREST OF JUDGMENT

The plaintiff respectfully moves, pursuant to Section 16-35 of the Practice Book, to set aside the verdict in this case for the following reasons:

1. The verdict was contrary to the evidence.
2. The jury was selected in a manner which improperly excluded minorities and persons of color.
3. Evidentiary rulings during the trial were erroneous.

THE PLAINTIFF

BY: /s/ John R. Williams
John R. Williams (#67962)
51 Elm Street
New Haven, CT 06510
203.562.9931
Fax: 203.776.9494
E-Mail: jrw@johnrwilliams.com
Plaintiff's Attorney

ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED

NO. CV-98-0163276-S : SUPERIOR COURT

HEMA MENON : J.D. DIST. OF STAMFORD

VS. : AT STAMFORD

ANN DUX : OCTOBER 12, 2002

DOCKETING STATEMENT

I. NAMES AND ADDRESSES OF ALL PARTIES, COUNSEL AND PERSONS HAVING A LEGAL INTEREST IN THE CAUSE SUFFICIENT TO RAISE A SUBSTANTIAL QUESTION WHETHER A JUDGE SHOULD BE DISQUALIFIED

The plaintiff is Hema Menon of 2 Spitzer Court, Norwalk, CT 06854.

The attorney for the plaintiff is John R. William, 51 Elm Street, New Haven, CT 06510.

The defendant is Ann Dux of 62 Bridge Street, New Milford, CT 06776.

The attorneys for the defendant are Cassidy, Mazza & LeBlanc, 1375 Kings Highway East, Fairfield, CT 06430.

II. CASE NAMES AND DOCKET NUMBERS OF ALL PENDING APPEALS WHICH ARISE FROM SUBSTANTIALLY THE SAME CONTROVERSY AS THIS OR INVOLVE CLOSELY RELATED ISSUES

None.

III. EXHIBITS IN TRIAL COURT

Yes.

IV. INCARCERATION STATUS OF APPELLANT

This is a civil case and the appellant is not incarcerated.

THE PLAINTIFF

BY: /s/ John R. Williams
John R. Williams (#67962)
51 Elm Street
New Haven, CT 06510
203.562.9931
Fax: 203.776.9494
E-Mail: jrw@johnrwilliams.com
Her Attorney

CERTIFICATION OF SERVICE

A copy hereof was mailed on the date above stated to Cassidy, Mazza & LeBlanc, 1375 Kings Highway East, Suite 475, Fairfield, CT 06430 (Fax: 203.331.1505).

/s / John R. Williams
John R. Williams

State of Connecticut
Judicial Branch

Case Detail

Plaintiff Name	VS	Defendant Name
MENON,HEMA	v.	DUX,ANN

Docket Number: CV-98-0163276-S
Court Location: Stamford
File Date: Jan 15 1998
Return Date: Feb 03 1998
*** Last Action Date:** Jun 16 2004
ADR Status: Not Applicable
Case Type: VEHICLE - MOTOR VEH* DVR AND/OR PSG V DVR

List Type: JURY
Disposition Date: Oct 03 2002
Judge/Magistrate: J. RYAN
Trial List Claim: Apr 22 1999
Disposition: JUDGMENT ON VERDICT-DFDT

* 'Last Action Date' is a data entry date, not actual date

Parties / Attorneys

Party Name & Address	Pty No.	Pltf / Def	Pro Se	Non Appear
HEMA MENON	01	P	Y	
2 PITZER COURT NORWALK, CT 06854				
Attorney: ALLAN FRIEDMAN (Juris No. 407029) 700 CANAL STREET STAMFORD , CT 06902				
Attorney: JOHN WILLIAMS (Juris No. 067962) LLC 51 ELM ST STE 409 NEW HAVEN , CT 06510				
ANN DUX	50	D		
Attorney: MAZZA & LEBLANC (Juris No. 408555) SUITE 475 1375 KINGS HIGHWAY EAST FAIRFIELD , CT 06430				

Motions / Pleadings / Objections

Entry No	Entry Date	Description	Initiated By	Arguable	Result	Result Date	Ordered By
101.00	Feb 23 1998	REQUEST TO REVISE	D	No			
102.00	Mar 13 1998	AMENDED COMPLAINT	P	No			
103.00	Mar 23 1998	ANS AND SPECIAL DEFENSE	D	No			
104.00	Mar 23 1998	CLAIM FOR JURY OF 6	D	No			
105.00	Apr 02 1998	AMENDED COMPLAINT	P	No			
106.00	May 12 1998	NOTICE OF INTERROGATORIE	P	No			
107.00	May 14 1998	REQ EXTND DISCOVERY TIME	D	No			
108.00	May 29 1998	OBJ TO INTERROGATORIES	D	No			
109.00	Jun 08 1998	MOT FILE ADDED QUESTIONS	D	No			
110.00	Jun 11 1998	REQ EXTND DISCOVERY TIME	D	No			
111.00	Jun 11 1998	OBJECTION TO MOTION	D	No			
112.00	Jun 17 1998	OBJ TO EXTENSION OF TIME	P	No			
113.00	Jun 22 1998	AFFIDAVIT RE OBJECTION	P	No			
114.00	Jun 29 1998	MOT FILE ADDED DISCOVERY	D	No	Granted	Jul 20 1998	Hon. EDWARD KARAZIN
115.00	Oct 01 1998	ORDER	Court	No			
116.00	Nov 09 1998	AFFIDAVIT	P	No			
117.00	Jan 28 1999	MOT FOR ORDER-PB 13-14	D	No			
117.70	Feb 19 1999	DOCKET MANAGEMT-PLEADING	Court				
118.00	Apr 22 1999	REPLY TO SPECIAL DEFENSE	P	No			
118.55	Apr 22 1999	TRIAL LIST		Yes			
119.00	Jun 09 1999	NOT OF FILING REQ ADMISS	D	No			
120.00	Jul 14 1999	DISCLOSE EXPERT WITNESS	D	No			

121.00	Jul 27 2000	NOTICE	P	No			
122.00	Jul 27 2000	MOT WITHDRAW APPEARANCE	P	No			
123.00	Oct 30 2000	MOTION FOR ORDER	P	No			
124.00	Nov 09 2000	OBJECTION TO MOTION	D	No			
125.20	Nov 13 2000	WITHDRAW MOTION	P	No			
126.00	Nov 22 2000	MOTION FOR ORDER	P	No	Off	Dec 04 2000	Hon. FRANK D ANDREA
127.00	Nov 28 2000	OBJECTION TO MOTION	D	No			
128.00	Nov 30 2000	OBJECTION TO MOTION	P	No	Off	Dec 18 2000	Hon. DOUGLAS MINTZ
129.00	Dec 21 2000	ORDER	Court	No			
129.55	Dec 21 2000	JUDGMENT OF DISMISSAL		Yes		Dec 21 2000	Hon. EDWARD KARAZIN
130.00	Apr 16 2001	MOT OPEN DISMISSAL JDGMT	P		Granted	Feb 11 2002	Hon. DOUGLAS MINTZ
131.00	Feb 13 2002	CASE AT TRL LIST STATUS	Court	No			
132.00	Feb 14 2002	MOT WITHDRAW APPEARANCE	P	No	Denied	May 06 2002	Hon. DOUGLAS MINTZ
133.00	Feb 20 2002	ORDER	Court	No			
134.00	Feb 22 2002	MOT WITHDRAW APPEARANCE	P	No			
135.00	Mar 01 2002	SUPPLEMENTAL RETURN	P	No			
136.00	Mar 22 2002	RETURN OF SERVICE	P	No			
137.00	Jul 24 2002	COMPLIANCE	P	No			
138.00	Jul 19 2002	REQ EXTND DISCOVERY TIME	D	No			
139.00	Jul 19 2002	DISCLOSE EXPERT WITNESS	P	No			
140.00	Jul 23 2002	OBJECTION	D	No	Overruled	Aug 05 2002	Hon. EDWARD KARAZIN
141.00	Aug 09 2002	DISCLOSE EXPERT WITNESS	D	No			
142.00	Aug 21 2002	ORDER	Court	No			
143.00	Sep 04 2002	MOT PROTECTIVE ORDER	P	No			
144.00	Sep 04 2002	BRIEF	D	No			

145.00	Sep 12 2002	CONSENT TO FILE	Court	No			
146.00	Sep 10 2002	MOTION FOR CONTINUANCE	P	No			
147.00	Sep 12 2002	COMPLIANCE	D	No			
148.00	Sep 18 2002	EXHIBITS FILED	D	No			
148.50	Sep 18 2002	VERDICT FOR DEFENDANT		Yes		Sep 18 2002	JOHN RYAN
149.00	Sep 30 2002	MOT SET ASIDE VERDICT	P	No	Denied	Oct 03 2002	JOHN RYAN
150.00	Sep 30 2002	MOTION FOR NEW TRIAL	P	No	Denied	Oct 03 2002	JOHN RYAN
151.00	Sep 30 2002	MOTION FOR ORDER	P	No	Denied	Oct 03 2002	JOHN RYAN
152.55	Oct 03 2002	JUDGMENT ON VERDICT-DFDT		Yes		Oct 03 2002	JOHN RYAN
153.00	Oct 16 2002	APPEAL-APPELLATE COURT	P	No			
154.00	Oct 18 2002	BILL OF COSTS	D	No			
155.10	Jan 15 2003	COPIES OF COURT FILE	Court	No			
156.55	Jan 20 2004	APPELLATE COURT DECISION		Yes		Jan 20 2004	BY THE COURT
157.00	May 11 2004	PET FOR CERTIFICATION	P	No	Denied	Jun 10 2004	BY THE COURT

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CONNECTICUT UNIFORM POLICE ACCIDENT REPORT FORM PR-1 REV '94

PDO

GPS READINGS: Latitude:
Time: Longitude:

FOR DOT USE ONLY

DATE OF ACCIDENT: 022096
MILITARY TIME: 1117
ACCIDENT SEVERITY: ☐ Fatal ☐ Injury ☑ PDO
VEHICLES INVOLVED: 2
PAGE # 1 of 2
POLICE CASE NUMBER: 96-6785

TOWN OR CITY NAME: Danbury
TOWN CODE: 0314
ACCIDENT OCCURRED ON (Street Name or Route #) AT ITS INTERSECTION WITH (Street Name or Route #): Lake Ave Ext at

IF NOT AT INTERSECTION
1. MEASURE DISTANCE 105 ☑ Feet ☐ Tenths of Mile ☐ Meters ☐ Kilometers
(✓ Check Appropriate Boxes)
2. DIRECTION ☐ North ☐ South ☐ East ☑ West
3. NAME OF NEAREST INTERSECTING STREET, TOWN LINE OR MILE MARKER of Hill Ridge Rd
Accident Occurred: ☐ On Private Property ☐ Parking Lot

	TRAFFIC UNIT #1	TRAFFIC UNIT #2
TRAFFIC UNIT	☑ Vehicle ☐ Pedestrian ☐ Non-Contact Vehicle	☑ Vehicle ☐ Pedestrian ☐ Non-Contact Vehicle
OPERATOR or PEDESTRIAN NAME (Last, First, Middle Initial)	Menon, Hema	Dux, Ann
ADDRESS (Street Number & Name)	29 Judith Dr	62 Bridge St
PROPER LICENSE CLASS	☑ Yes ☐ No	☑ Yes ☐ No
CITY OR TOWN	Danbury	New Milford
STATE	Ct	Ct
ZIP CODE	06811	06776
SEX	☐ M ☑ F	☐ M ☑ F
OPERATOR LICENSE #	164988833	144876164
STATE	CT	CT
DATE OF BIRTH	040358	021562
OWNER'S NAME (Enter SAME if Owner is Operator)	Menon, Hema	Same
ADDRESS (Street Number and Name)	Same	
CITY OR TOWN		
STATE		
ZIP CODE		
BODY TYPE	4dr	2dr
REGISTRATION #	720ETK	596JYB
STATE	CT	CT
VEHICLE YEAR AND MAKE	91 Ford	89 Ford
VEHICLE IDENTIFICATION NUMBER	1FAPP14J5MW274399	1FAPP9195KW160174
CARRIER NAME		
CARRIER ADDRESS (#, Street, City or Town, State, Zip Code)		
SOURCE OF CARRIER NAME	☐ Shipping Papers/Trip Manifest ☐ Driver ☐ Side of Vehicle	☐ Shipping Papers/Trip Manifest ☐ Driver ☐ Side of Vehicle
	☐ USDOT # ☐ ICCMC #	☐ USDOT # ☐ ICCMC #
GROSS VEHICLE WEIGHT RATING #		
HAZARDOUS MATERIAL PLACARD REQUIRED?	☐ Yes ☐ No 4 Digit #	☐ Yes ☐ No 4 Digit #
DISPLAYED?	☐ Yes ☐ No 1 Digit #	☐ Yes ☐ No 1 Digit #
HAZARDOUS CARGO RELEASED?	☐ Yes ☐ No	☐ Yes ☐ No
ENFORCEMENT ACTION TAKEN	☐ None ☐ Arrest ☐ Written Warning ☐ Verbal Warning	☑ None ☐ Arrest ☐ Written Warning ☐ Verbal Warning
STATUTE OR ORDINANCE #'S	14-240	—
SUBJECT OF ACTION	☑ Operator ☐ Carrier ☐ Owner ☐ Pedestrian	☐ Operator ☐ Carrier ☐ Owner ☐ Pedestrian
AUTOMOBILE INSURANCE — NAME — POLICY #	Allstate 619030928	Geico 363-02-60
PARTS OF VEHICLE DAMAGED	Left front	Right side
VEHICLE TOWED TO	None	None
TOWED DUE TO DAMAGE	☐	☐

ALL INVOLVED PERSONS

L	M	N	NAME AND ADDRESS OF EACH INVOLVED PERSON	Date of Birth	O	P	Q	
1	N	0	TRAFFIC UNIT #1 OPERATOR OR PEDESTRIAN #1	[redacted]	4	3	1	1
2	N	0	TRAFFIC UNIT #2 OPERATOR OR PEDESTRIAN #2	[redacted]	4	3	1	2
3								3
4								4
5								5
6								6

App. 33

BEST AVAILABLE COPY

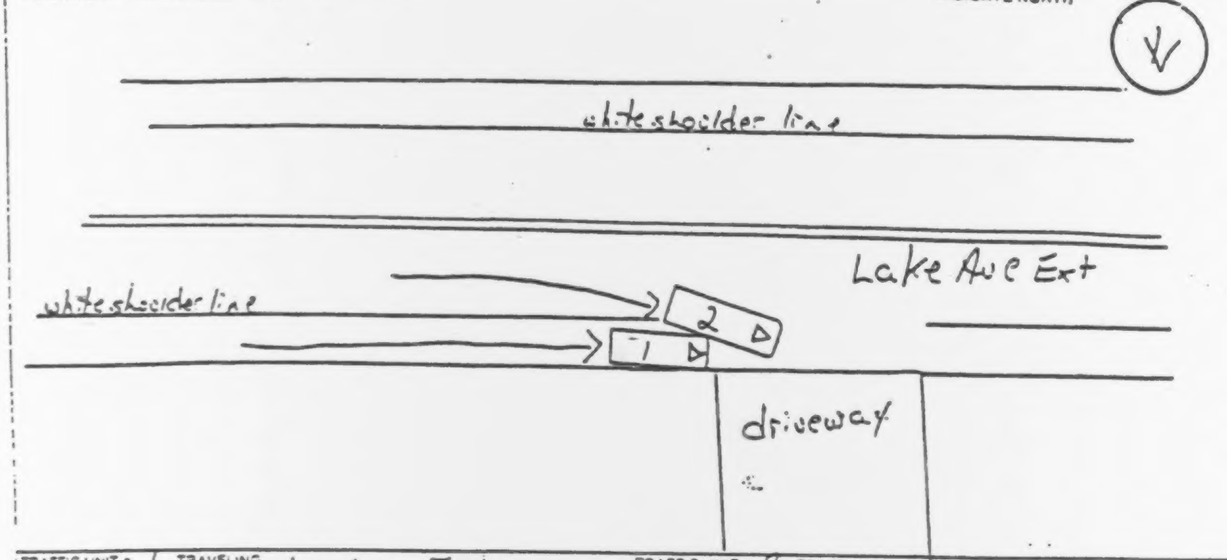
FORM PR-1

Page # 2 of 2

Police Case Number 96-6795

ACCIDENT DIAGRAM Not to scale

INDICATE NORTH



TRAFFIC UNIT # 1 TRAVELING ☐N ☐S ☐E ☑W ON Lake Ave Ext

TRAFFIC UNIT # 2 TRAVELING ☐N ☐S ☐E ☑W ON Lake Ave Ext

Op#2 stated that as she began to turn left she was struck by vehicle #1. Op#1 stated that vehicle #2 turned in front of her striking her vehicle. Both operators stated vehicle #2 was in front. Roadway is marked for one lane of travel each direction with a shoulder divided by a white line. Op#1 could not understand that she was driving in shoulder. She insists that vehicle #2 turned into her, even though she was following to the right rear of veh#2. Op#2 stated she did not know vehicle #1 was there until impact.

DAMAGE TO PROPERTY OTHER THAN INVOLVED VEHICLES

1. DESCRIBE THE NATURE AND EXTENT OF PROPERTY DAMAGE —

NAME AND ADDRESS OF PROPERTY OWNER —

2. DESCRIBE THE NATURE AND EXTENT OF PROPERTY DAMAGE —

NAME AND ADDRESS OF PROPERTY OWNER —

RANK AND SIGNATURE OF INVESTIGATING OFFICER	OFFICER I.D.	POLICE AGENCY IDENTIFICATION	REPORT DATE	CASE STATUS	SUPERVISOR
PO	457	Danbury	2/20	OPEN ☐ CLOSED ☑	

Danbury Police Department
INCIDENT REPORT NARRATIVE SUPPLEMENT

INCIDENT # 96-6795

DATE OF INCIDENT: 2/20/96
TIME OF INCIDENT: 11:11
TYPE OF INCIDENT: Motor vehicle Accident
INCIDENT CODE:
INVESTIGATING OFFICER: L-Frinton
BADGE NO: 489
DATE REPORT SUBMITTED: 3/07/96
LOCATION OF INCIDENT: ST NO: STREET NAME: Lake Ave Ext
APT NO /LOCATION:

After, being contacted by Sgt. Guerrara, regarding this, accident I recontacted both operators. Operator #1, Hema Menon stated she was driving on Lake Ave heading toward New York. Vehicle #2 came from the left and hit her car. This car did not stop but continued turning left into parking lot where she parked and walked back. When the car impacted Op#1 says her car was pushed into shoulder of road.

Op#2, Ann Dux stated she exit I-84 by the Gulf station, and took a right heading toward the Ethan Allen Inn. As she got to the driveway she began to turn right into driveway and was struck by a vehicle driving in right shoulder. As her car was blocking the lane she moved it into parking lot.

Damage to vehicles is - veh#1 has damage to right side, veh#2 has damage to drivers side front. This was confirmed with both operators.

In original report is was mistakly reported that veh#2 was turning left. Vehicle #2 based upon statements of Op#2 and Op#1, damage to each vehicle, and position of veh#1 it is this officers opinion, that vehicle #2 was making right turn. Therefore summons given to operator #1 was correct and should stand.

INVESTIGATING OFFICER'S SIGNATURE:
BADGE: 489
REVIEWED BY FIELD SUPV:

DISTRIBUTION (FOR USE BY SHIFT COMM ONLY)
☐ PROSECUTOR
☐ DETECTIVE BUREAU
☐ BOARD OF HEALTH
☐ DOMESTIC RELATIONS
☐ JUV COURT
☐ OTHERS

FOLLOW-UP ACTIONS BY
☐ INVESTIGATOR
☐ JUVENILE OFFICER

PAGE 1 OF 1

FORM PR-1 REV.12/94

APPLICATION

FOR DOT USE ONLY

INVOLVED

PAGE # 1 of 2

POLICE CASE NUMBER 96-6785

ON (*Street Name or Route #*) AT ITS INTERSECTION WITH (*Street Name or Route #*)

UC Ext at

NAME OF NEAREST INTERSECTING STREET, TOWN LINE OR MILE MARKER

of

Accident Occurred: ☐ On Private Property ☐ Parking Lot

TRAFFIC UNIT #2 ☑ Vehicle ☐ Pedestrian ☐ Non-Contact Vehicle

OPERATOR #2 or PEDESTRIAN NAME (*Last, First, Middle Initial*) Dut, Ann

ADDRESS (*Street Number & Name*) 62 Bridge St

PROPER LICENSE CLASS ☑ Yes ☐ No

CITY OR TOWN New Milford STATE Ct ZIP CODE 06776

SEX ☐ M ☑ F

OPERATOR LICENSE # 144876164 STATE CT

DATE OF BIRTH Month Day Year 02/15/60

OWNER'S NAME (*Enter SAME If Owner is Operator*) Same

ADDRESS (*Street Number and Name*)

CITY OR TOWN STATE ZIP CODE

BODY TYPE 2d

REGISTRATION # 596TYB STATE CT VEHICLE YEAR AND MAKE 89 Ford

VEHICLE IDENTIFICATION NUMBER 1FAPP9119EKW160017

CARRIER NAME

CARRIER ADDRESS (#, Street, City or Town, State, Zip Code)

SOURCE OF CARRIER NAME ☐ Shipping Papers/Trip Manifest ☐ Driver ☐ Side of Vehicle

☐ USDOT # ☐ ICCMC #

GROSS VEHICLE WEIGHT RATING #

HAZARDOUS MATERIAL PLACARD REQUIRED? ☐ Yes ☐ No 4 Digit #

DISPLAYED? ☐ Yes ☐ No 1 Digit #

HAZARDOUS CARGO RELEASED? ☐ Yes ☐ No

ENFORCEMENT ACTION TAKEN ☐ None ☐ Arrest ☐ Written Warning ☐ Verbal Warning

STATUTE OR ORDINANCE #'S

SUBJECT OF ACTION ☐ Operator ☐ Carrier ☐ Owner ☐ Pedestrian

AUTOMOBILE INSURANCE — NAME — POLICY # Geico 363-02-60

PARTS OF VEHICLE DAMAGED

VEHICLE TOWED TO: ☐ TOWED DUE TO DAMAGE

NVOLVED PERSON	Date of Birth	O.	P.	Q.	
R PEDESTRIAN #1					1
R PEDESTRIAN #2					2
	Month Day Year				3
	Month Day Year				4
	Month Day Year				5
	Month Day Year				6
	Month D Year				7
	Month				8

ALL INVOLVED PERSONS

R

A

B

C

D

E

F

G

H 2

S 2

T 2

J 21

J 22

U 2

K 21

K 22

V

W

X 2

Y 2

Z 2

AA 21

AA 22

AA 23

AA 24

Date: 02/23/96 08:41 P.M.
Estimate ID: [illegible]-01
Committed
Profile ID: GE 6.0

GEICO AND AFFILIATES
1918 BOSTON POST RD. DARIEN, CT 06820
(203) 656-2722

Damage Assessed By: PAUL SNYDER

FAX # 203-656-2478 STATE LIC #000970399

Condition Code: Good
Date of Loss: 02/20/96
Accident Date: 02/20/96
Policy Number: 3:302690 0111 0MVY A336
Deductible: 250.00
Insured: [illegible] FAY CODE:2 CO:13
Address: PO BOX 553 NEW MILFORD CT 06776-0553
Telephone: Work Phone: (203) 868-0518 ext: 0000 Home Phone: (203) 354-6748
Mitchell Service: 910611
Description: 1989 FORD ESCORT LX 2D H/B
VIN: [illegible]
License: 596-[illegible] CT
Mileage: 113,385
OEM/ALT: A
Search Code: 06473
Color: BLUE

Line Item	Entry Number	Labor Type	Operation	Line Item Description	Part Type/ Part Number	Dollar Amount	Labor Unit
1	033370	BODY	REPAIR	*R ROCKER OUTER PANEL			2.0*
2	AUTO	REFIN	REFINISH	R ROCKER PANEL			C 1.4
3	037090	BODY	REMOVE/REPLACE	R FRT DOOR SHELL	QUAL RECYCLED PART	250.00*	3.0*
4	AUTO	REFIN	REFINISH	R FRT DOOR OUTSIDE			C 3.9
5	AUTO	REFIN	REFINISH	R FRT ADD FOR JAMBS & INSIDE			C 1.0
6	039090	BODY	REMOVE/REPLACE	R FRT DOOR ADHESIVE MOULDING	ORDER FROM DEALER	46.75	0.2
7	049850	REFIN	REFINISH	R LOCK PILLAR			C 0.5
8	931090	BODY	REPAIR	*UNIBODY STRUCTURE			3.0*
9				PREPULL QUARTER PANEL			
10	049990	BODY	REPAIR	*R QUARTER OUTER PANEL			10.0*
11	AUTO	REFIN	REFINISH	R QUARTER PANEL OUTSIDE			C 2.1
12	054300	BODY	REMOVE/REPLACE	R QUARTER ADHESIVE MOULDING	E8FZ 6129076 A	18.42	0.2
13	AUTO	REFIN	ADD'L LABOR OPR	CLEAR COAT			1.7*
14	933005	BODY	ADD'L LABOR OPR	RESTORE CORROSION PROTECTION			0.5*
15	933012	REFIN	ADD'L LABOR OPR	STRIPE		10.00*	0.5*
16	936012		ADD'L COST	HAZARDOUS WASTE DISPOSAL		3.00*	
17	AUTO		ADD'L COST	PAINT MATERIALS		114.00*	

* Judgement Item
C Included in Clear Coat Calc

Remarks
CHECK # R0550?2573 ISSUED TO INSURED FOR DAMAGES LESS DEDUCTIBLE
****THIS IS A BORDERLINE TOTAL LOSS. ANY SUPPLEMENT MAY RESULT IN
TOTAL LOSS STATUS.****

Prior Damage
WINDSHIELD CRACKED. HATCH BACK DENTED. HUB CAP CRACKED.

ESTIMATE RECALL NUMBER: 02/23/96 20:41:00 003924080010102?-01
Mitchell Data Version: [illegible]
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DEPOSITION TRANSCRIPT OF THE PETITIONER

The following are some portions selected from the petitioner's deposition transcript and asked by the respondent's counsel at the trial. The responses which the petitioner gave at the time of the deposition were not transcribed as articulated verbatim by the petitioner at her deposition.

As transcribed in the transcript of the deposition of the petitioner.

Page 34, line 12-20.

A As soon as my vehicle was struck, I stopped my car.
Q Okay. And where was your car?
A It was on the shoulder, you know.
Q Okay. And that would have been to the right of the white line?
A It was -- yeah.
Q Okay.
A Within the white line.

Should Read. (What the petitioner actually said at the deposition.)

A As soon as my car was struck, I stopped my car.
Q Okay. And where was your car?
A It was on the shoulder.
Q Okay. And that would have been to the right of the white line?
A Yes.

Please note, the petitioner did not say, "Within the white line." at the time of the deposition because it is incorrect and completely contradicts the petitioner's version of the accident. The petitioner would not say, "Within the white line" because her car was not "within the white line". The petitioner's car was not within the shoulder, but it was partly within the shoulder and partly outside the shoulder.

As transcribed in the transcript of the deposition of the petitioner.

Page 37, line 12-13.

A When the police arrive, I was sitting in my car.
And, uhm, she ran up to the police officer.

Should Read. (What the petitioner actually said at the deposition.)

A I was sitting in my car waiting for the police to arrive.
When the police arrived, she ran up to the police officer.

Please note, how the actual response of the petitioner was altered deliberately to contradict the petitioner's version of the accident and her situation.

As transcribed in the transcript of the deposition of the petitioner.

Page 51, line 22-25 to Page 52, line 1.

Q All right . Were you hurt at all immediately
after the accident?
A Uh, I was -- I was -- I had -- I was following --
immediately after the accident, I guess, I had a

Page 52, line 1.

blackout during the accident.

Should Read. (What the petitioner actually said at the deposition.)

Q I was foggy immediately after the accident. I had a blackout.

Please note, how the actual response of the petitioner was altered deliberately to make it incoherent and to discredit her version in favor of the respondent. Many redundant words were put in to ridicule and humiliate the petitioner and to show she has limited skills in speaking and understanding English and has problems organizing her thoughts.

Page 52, line 2-5.

Q When you say had a blackout, did you actually lose consciousness?
A You know, you see, uhm, I was not really conscious at the time. That's what I can say.

Should Read. (What the petitioner actually said at the deposition.)

Q When you say had a blackout, did you actually lose consciousness?
A What do you mean by lose consciousness? I do not understand.

Please note, how different the petitioner's actual response is from the fabricated response. The petitioner's response was altered completely to undermine her credibility and to disparage her injuries and sufferings.

TRIAL TRANSCRIPT OF THE PETITIONER
Trial Transcript of September 17, 2002

In the following dialogue, the respondent's counsel questioned the petitioner about the facts relating to the accident and pointed out to the petitioner, the discrepancies in what the petitioner had stated below at the trial to that of the transcript of the petitioner's deposition.

Page 90, line 10-27.

Q Now, as soon as the accident happened, you stopped your car; is that right?
A Yes.
Q And when you came to a stop, when your car stopped, it was in the shoulder to the right of the white line; isn't that right?
A No, that's not really right. Because part of -- like I mentioned before, part of my car was in shoulder, part of my car was outside the shoulder.
Q Do you remember a couple of years back you gave deposition testimony in my office?
A Yes.
Q At your deposition, didn't you tell us that the vehicle came to a stop to the right of the white line?
A Yes. It depends on which way you look which is the right.
Q Okay. So, you did say that, you did tell me that in your deposition --

Page 91, line 1-27.

A Yes. I did say that it was right.
Q And didn't you also tell us that it was within the white line when your vehicle came to a stop? Isn't that right?
A No, I didn't say that. I did not say that. But

it was in my transcript of deposition, that's all I can say.

Q Do you recall a deposition back on April 28th, 1999? Is that right?

A Yes.

Q And at this deposition, you were asked to swear to tell the truth, the whole truth and nothing but the truth; is that right?

A Yes.

Q I will ask if you remember this question and giving these answers.

A THE COURT: Who was there? Was your lawyer there with you?

THE WITNESS: Yes.

THE COURT: Okay.

MS. ENGSTROM: Excuse me --

MR CASSIDY: And at the time, I believe that was Christine O'Sullivan.

MS. ENGSTROM: Could you please specify what page you're on?

MR. CASSIDY: Sure. This is page 34 --

MS. ENGSTROM: Okay.

Page 92, line 1-27

MR. CASSIDY: -- line 16. Actually, I'll move up to line 12. Okay?

BY MR. CASSIDY:

Q "Immediately after the two vehicles made contact, what did you do?"

Answer: "As soon as my vehicle was struck, I stopped my car."

That's what you said earlier; right?

A Yes.

Q Okay. Then question: "Okay. And where was your car?"

Answer: "It was on the shoulder, you know."

And that's what you told us earlier; Is that right?

A Yes.

Q Okay. Question: "And would that have been to the right of the white line?"

Answer: "It was -- yeah."

Question: "Okay."

Answer: "Within the white line."

So, do you remember telling Attorney Donahue from my office at the time that your car was within the white line when it came to a stop?

A No.

Q You don't remember saying that?

A I never said that, because the car was not within the shoulder of the road.

Page 93, line 1-27.

Q Okay. Did you understand the question --

A I understand the question --

Q -- that Attorney Donahue was asking you?

A -- but at the time of the deposition, that question was not asked.

Q Are you saying --

THE COURT: Wait a minute, now. I'm getting a little confused. Why don't you show her the page?

MR. CASSIDY: Sure.

THE COURT: The question, madame, is if you were in the room at that time and they were questioning you, do you recall that? And they claim that this is a transcript of what was said, that the questions were asked to you and these were your answers.

Do you want to read it and see whether or not you agree or disagree with that --

THE WITNESS: I disagree with that, because

I didn't say that.

THE COURT: So, you're saying what is printed there is not what you said --

THE WITNESS: Yes.

THE COURT: not whether it's right or wrong. It might have been your opinion at this time. It might be that you were wrong, and then you're right now. You might be right then and

Page 94, line 1-27.

wrong now. We're not asking you that.

I'm just asking you basically: You're saying that which you have in front of you was not actually said and answered?

THE WITNESS: Yes. I never said that at the deposition, between the white line, because it's absolutely incorrect. I would never say that.

THE COURT: But, I mean, you might have said it and you might have been incorrect at that time, and you can correct the mistake and tell the jury now. I just want to make sure, because we -- is this signed by her? I don't know where the signatures are.

MS. ENGSTROM: May we approach, Your Honor?

THE COURT: Yes.

Excuse me a minute.

(Side bar discussion off the record.)

(End of discussion at the side bar.)

THE COURT: Ladies and gentlemen, we think there are other papers in this file that may help to straighten out what the inconsistencies or what the problems developing are. I thought we might be able to get it straightened out right now.

What I'd suggest is that we either stop the cross examination and we work it out; or, counsel, if you want to release that issue and proceed further and we'll straighten that out tomorrow.

Page 95, line 1-27.

Because we're now running out of time. So, I don't know whether you want to go on further.

MR. CASSIDY: Why don't we release the issue for now and then --

THE COURT: All right. We'll get back to that later --

MR CASSIDY: -- we'll work it out tomorrow?

THE COURT: -- and straighten it out. Because what we're doing now seems to be indicating that she is saying that there might be an error in the transcript itself, and that's incorrect. And there are remedies or other situations and paperwork that might straighten that out or it might not straighten it out. So, we'll just leave that open for a little while and straighten it out, what's going on.

But you can get into situations where they made the statement, but now they realize that they -- at least their testimony now would be that that statement is incorrect and the testimony they're giving you now is correct. And, of course, you've got to figure out what weight and credibility you give to it.

So, that could be the situation. But at the present time, she seems to be denying to the effect that the question was actually asked and answered by her. So, we've got to straighten that

Page 96, line 1-27.

point out and see what's going on.

You may proceed, counsel.

MR. CASSIDY: Thank-you, Your Honor.

BY MR. CASSIDY:

Q The police arrived; is that right?

A Yes.

Q And you spoke with the police officer who arrived; is that right?

A Yes.

Q When the police officer arrived, your vehicle was in the same position that it was immediately after the accident; isn't that right?

A Yes.

Q And when the police officer arrived, you had the opportunity to speak to the police officer; is that right?

A Yes. But I wasn't able to explain to him fully my version of the accident.

Q Okay. You were upset at the time when the police officer arrived because of the fact that you were involved in an accident; is that fair to say?

A Yes.

Q Okay. And did you tell the police officer -- well, isn't it true that you told the police officer that you were driving in the shoulder of the roadway and you thought that was a moving lane for traffic?

A No. I never told the police officer such a thing like that.

Page 97, line 1-27.

Q Isn't it true that you told Ms. Dux that you thought that that was your lane for traffic in the shoulder area, and that's the lane you were proceeding in at the time of the accident?

A No, I never made such a comment to Ms. Dux at all.

Q So, when the police officer arrived, you were in your car?

A When the police arrived, I was not in my car. I was getting out of my car and walking towards him.

THE COURT: Let me come on the record, Mr.

Cassidy.

If I understand correctly -- and you correct me if I'm wrong -- but right after the collision, you brought your car to a stop, and it wasn't moved?

THE WITNESS: Yes.

THE COURT: And you were driving westerly, so when you got out of the door of the car, where was the white line in relationship when you stepped out of the door? Did you observe where the white line was? When you stepped out, did you step on the right or the left of that white line, if you can recall?

THE WITNESS: On the left-hand side.

THE COURT: You're saying you were on the left-hand side when you --

THE WITNESS: Well, I had to step on the

Page 98, line 1-27.

left-hand side --

THE COURT: Well, you're getting out of your car, so your car -- if I have it right now, I don't want to get on the wrong side of the road -- but I think I'm going westerly, on the westerly shoulder or in the westerly lane here, whatever I'm in, I stop. My car is there, some portion. You'll pick up the diagram. When I open the door, I think I'm either going to be over the white line to my right, or on the white line, or to the left, somewhere in there.

I think if counsel can develop that, it might give you a better idea of where that margin line is.

THE WITNESS: Well, when I got out of my car, I was on the left-hand side.

THE COURT: Okay.

BY MR. CASSDY:
Q So, your car was to the right of the shoulder, is that fair to say, as you indicated earlier?
A I don't recall seeing the right-hand side part of the car outside on the left-hand side.
Q Okay.
THE COURT: Okay. That's what I was looking for.
BY MR. CASSIDY:
Q Now, when the police arrived, you were in your car

Page 99, line 1-27.

or you weren't in your car?
A I was walking towards the police officer.
Q Well, do you recall, again in that deposition, that you had told Attorney Donahue that when the police officer arrived, you were sitting in your car?
A No, I did not say that I was sitting in the car.
Q Let me just show you page 37, line 11. If you could just read it.
THE COURT: You can read it to yourself, ma'am.
BY CASSIDY:
Q That's fine. Read it to yourself. Let me just show you where the lines are. It's those lines. Read it to yourself first.
A (Witness examined document.)
Q Now, does that refresh your memory -- are you finished reading it?
A Yes.
Q Does that refresh your memory that you told Attorney Donahue that you were in your car at the time that the police arrived?
A Let me mention the deposition is incorrect. What exactly I told Attorney Donahue at that time was that when the police arrived, I was walking -- let me think a minute.

I was sitting in the car waiting for the police to arrive. And when the police arrived, she ran out to the police officer.

Page 100, line 1-27.

Q Are you telling me that the transcript is incorrect, that you did not tell Attorney Donahue that you were in the car at the time the police arrived?
A That transcript is incorrectly done.
Q That's what you're telling me? Okay.
Now, you told the police officer there at the scene that you were hit by a car that was coming from the left; is that right? Is that correct?
A Yes.
Q And he asked you which car was behind, and you told him that your car was behind the Dux's vehicle; is that right?
A Yes.
Q And when your car was hit, the Dux vehicle was in front of your vehicle; is that right?
A Yes.
Q And when the impact occurred, your car stopped immediately; is that right?
A Yes. It was stopped immediately and was pushed to the shoulder of the road.
Q Well, when the impact occurred, did you stop your car immediately?
A Everything happened in such a flash, so I don't know what exactly happened. So, I stopped my car, but my car was pushed to the shoulder because of the impact.
Q Again referring to the deposition transcript with Attorney Donahue, page 34, line 10, question: "Immediately

Page 101, line 1-27.

after the two vehicles made contact, what did you do?"

Answer: "As soon as my vehicle was struck, I stopped my car."

Do you recall --

A Yes. I said that, yes.

Q -- answering that question?

A Yes, that's what I said. And that's what happened. I stopped my car.

Q Okay. So, immediately after the vehicle made contact, you stopped your car?

A Yes, that's right. That part of the deposition is right.

Q And when your car stopped, it was in the shoulder lane; isn't that right?

A Not exactly in the shoulder. Partly in the shoulder --

THE COURT: She said a portion was in the shoulder lane, counsel.

BY MR. CASSIDY:

Q Now, let me take you back away from the accident scene a moment. Before the place where the accident happened, there is a traffic light you have to pass on Lake Avenue Extension; is that right?

A Yes.

Q Okay. How many lanes for moving traffic are there at the place where the traffic light is?

A There are two lanes at first, and then they merged

Page 102, line 1-27.

into one.

Q Okay. So, there are two lanes at the intersection before the place where the accident happened; is that right?

A Yes.

Q Then after that intersection, it turns into one lane, is that right?

A Yes.

Q And then there's a shoulder on the right?

A Yes.

Q So, there's one lane for moving traffic, and there's a shoulder on the right; is that right?

A Yes.

Q Okay. Now, when the impact occurred, isn't it your claim that you blacked out to some degree?

A Yes. I had a blackout at the time of the accident.

Q Okay. And isn't it your claim that you lost consciousness for a period of time? Isn't that true?

A No. I did not lose consciousness at all.

Q Referring to the deposition transcript, page 52, line 2, "When you say you had a blackout, did you actually lose consciousness?"

Answer: "You know -- you see -- um -- I was not really conscious at the time, that's all I can say."

Do you remember giving that answer to that question?

Page 103, line 1-27.

A No, I didn't give that answer. What I was saying was that -- I mentioned at the time of the deposition, "What do you mean by 'lose consciousness'? I do not understand what you mean by that."

Something else was put in there. And I'm not going to admit something that was put there, someone put in there for me.

Q So, you're saying the transcript is not correct when it states, "I was not really conscious at the time"?

A Yes. Because I was conscious at the time. I just had a blackout. A blackout doesn't mean that I lost consciousness.

Q Okay. Well, I'm just asking about the transcript. You're saying the transcript is not accurate?

A Yes.

Q And you also claim that you were foggy when the accident occurred as well; isn't that right?
A Yes, I was little foggy.
Q Okay. So, you saw the Dux vehicle on impact for the first time. You say you blacked out and were foggy?
A Yes.
Q And you --
A That was immediately after the accident, not at the time of the accident. It was after the collision occurred that I was a little foggy, and I had a blackout --
Q Okay. But you said you blacked out immediately after -- when the -- immediately after the accident

Page 104, line 1-27.

occurred, you blacked out. That's what you said; right?
A Yes.
Q So, even though you saw the other car on impact for the first time and you said you blacked out immediately after the accident --
A Excuse me. Can I say one thing? It was not at the time of the collision, it was after the collision as I have testified.

THE COURT: But you were still sitting in the car, right?

THE WITNESS: Yes.

THE COURT: And that was a few minutes or a few seconds after the accident that this started developing, you blacked out and you felt a little fuzzy or foggy?

THE WITNESS: After the collision.

THE COURT: You had no problem before the accident?

THE WITNESS: Yes. I did not have any problem before the accident.

BY MR. CASSIDY:
Q But immediately after the collision, you have this

blackout ; is that right?
A I would like to explain the word "immediately." When I say immediately after the collision, it's when everything has occurred, all of the collision and everything has all occurred. Like my car was pushed to the

Page 105, line 1-27.

shoulder, and her car was parked in the parking lot. That's the time that it happened, not at the time when I was driving. I did not have a blackout, I was conscious at the time when I was driving.

MR. CASSIDY: I would just move to strike the unresponsive portions, Your Honor.

THE COURT: I'm going to overrule that.

BY MR. CASSIDY:
Q Well, do you remember this question at the deposition and giving this answer? Page 51, line 22.
"All right. You were hurt? Were you hurt at all immediately after the accident?"
"I was, I was. I had -- I was following -- immediately after the accident, I guess I had a blackout during the accident."

Do you remember giving that answer to that question back in the deposition?
A Yes, I do.
Q Okay. So, you had a blackout during the accident, that's when you said during the deposition; is that right?
A Yes.
Q Okay. So, you saw the other vehicle on impact for the first time, and you had a blackout during the accident. But you are still able to tell us the speed of the Dux vehicle at the time of the accident; is that right?
A Yes.
Q Okay. And you're still able to tell us that it

Page 106, line 1-10

was proceeding in a westerly -- oh, I'm sorry -- in an easterly direction on Lake Avenue Extension?
A Yes.
Q Even though you saw it on impact; is that right?
A Yes.
Q And you're saying that the Dux vehicle was going 55 miles an hour at the time of the accident --
A Yes, she was.
Q -- is that what your estimate was?
A Yes. She was traveling at a very high speed.

The transcript of the petitioner's deposition is false and inaccurate and was tampered with and falsified as it did not reflect the actual proceedings that took place at the deposition, and the transcript was used against the petitioner. At the trial, the respondent's counsel, especially brought out those statements which the petitioner did not make at her deposition, but they were put in the transcript just to discredit the petitioner's version of the accident in favor of the respondent and to discredit her injuries and sufferings. The responses of the petitioner were rearranged, altered, rephrased, rehashed, and contorted and words were added to the petitioner's statements to make the petitioner sound like an unreliable and unintelligible witness to the accident and to give a poor impression of the petitioner.

The dialogue or parts of the dialogue that were put in the transcript of the deposition include incorrect facts which completely contradict the petitioner's version of the accident and her situation. Many redundant words were put in the deposition transcript in the responses of the petitioner to make the petitioner seem like a person who has limited skills in speaking and understanding English and who has problems organizing her thoughts while she speaks to explain away the incorrect police accident report. The deposition transcript shows words, intentionally and deliberately, used to ridicule and humiliate the petitioner. Some of the responses of the petitioner were altered or rephrased, so they completely contradict the petitioner's version of the accident and her situation in favor of the respondent's version. Significant details of the accident which were brought out by the petitioner were omitted from the deposition transcript to undermine the credibility of the petitioner and to discredit her version of the accident in favor of the respondent. Expressions which she did not use at the deposition have been added in the deposition transcript and made to seem like she actually said them. In many of the altered responses of the petitioner for the deposition transcript, her expression of stating her responses or using certain words were selected to make it seem like she actually gave the responses, herself. This was done to ridicule her and to create a poor impression of her. Statements, not mentioned by her during the deposition were included in the deposition transcript along with the statements that she made during the deposition. Fabricated words were added to the deposition transcript to make it seem like she was trying to make her version of the accident seem reliable.

Overall, the deposition transcript was craftily done, it was very difficult to detect the inaccuracies and defects as it required numerous readings to detect them.

All the errors, omissions, additions, and alterations in the petitioner's deposition transcript were done intentionally and deliberately in an effort to assist the respondent and to create a poor impression of the petitioner and that she does not have the ability to speak and understand English, well, and to ridicule and humiliate her with the sole purpose to discredit her version of the accident and to undermine and disparage her injuries and sufferings in favor of the respondent.

The respondent's counsel as well as the Stamford Superior Court and Trial Court of Connecticut were aware that the petitioner did not agree with the manner the deposition transcript was transcribed as the petitioner's counsel informed the respondent's counsel and the Court about the inconsistencies in the petitioner's deposition transcript well in advance even before the trial was scheduled to take place.

The respondent's counsel mentioned at the trial, the petitioner stated her car was within the shoulder at the deposition and read that portion. (9/17/02 Tr. p. 92-94; Dep. Tr. p. 34, line 12-20). The petitioner mentioned at the trial, her car was not within the shoulder and she would never say her car was within the shoulder, and that the statement was put in the transcript. The respondent's counsel had the words "within the white line" (Dep. Tr. p. 34, line 12-20) put in her deposition transcript to discredit her version. This was done to show she had indeed been traveling in the shoulder and the respondent was in the intended lane next to her.

The respondent's counsel read a portion from the deposition which states, the petitioner had a blackout. In the petitioner's deposition, it shows the petitioner stating that she had a blackout after the accident in terms of what she said at the deposition. (Dep. Tr. p. 51, line 22-25 to page 52, line 1). However, the respondent's counsel wanted the petitioner to admit, she actually had a blackout at the time of the accident by harassing her over and over again to confuse the petitioner, so she would give the incorrect response, claiming she said at the deposition she had a blackout at the time of the accident to show it is not possible for her to determine the respondent came from the left, across the other side of the street as she was not in the proper frame of mind or physical condition to witness the respondent coming from the opposite side of the street. (9/17/02 Tr. p. 102-106)

The respondent's counsel read a portion from the deposition transcript which states the petitioner lost consciousness. (Dr. Tr. p 52, line 2-5). The petitioner mentioned at the trial, she did not lose consciousness and that was not what the petitioner stated at her deposition. (9/17/02 Tr. p. 102-106). At her deposition, the petitioner only asked a question seeking for clarification of the term "lose consciousness". However, the respondent's counsel had the transcript altered to read as the petitioner stating that she "was not really conscious at the time". (Dep. Tr. line 2-5). This was done to show since the petitioner said at the deposition that she lost consciousness, she could not have witnessed the respondent coming from the left across the other side of the street, and it was only her imagination that the respondent came from the opposite side of the street and that the petitioner was not in control of her car and herself because she lost consciousness thereby causing the collision.

The respondent's counsel tried to show the petitioner was not interested in speaking to the police officer about the accident by reading a portion of the transcript which states when the officer arrived, the petitioner was sitting in her car. The petitioner said at the trial, she did not say that and she actually said at the deposition, she was sitting in the car, waiting for the police to arrive. The respondent's counsel had the petitioner's response altered to discredit the petitioner's version of the accident in favor of the respondent. The respondent's counsel may be trying to show the reason why the police officer did not take any interest in the petitioner's version was because she was not keen in meeting the officer, quickly, unlike the respondent who ran to meet the officer.

The respondent's counsel did not have to bring out the inconsistencies in the deposition transcript to show that it was contrary to what the petitioner said at the trial as he was fully aware of the complaints that she made about that transcript. However, since the respondent's counsel being fully aware that the deposition transcript is false and inaccurate and yet, he set out with the intent to ridicule, and humiliate, and intimidate the petitioner and he set out with malice to discredit her version in favor of the respondent, the petitioner is left with no choice but to highlight the inconsistencies in her deposition transcript and to explain her version.

In short, the respondent's counsel was trying to show the petitioner as a very inconsistent person – she said something at the deposition and another thing at the trial and to add to that she denied what she had said at the deposition and accused others. Hence, the respondent's attorney was showing at the trial, the petitioner could not be believed and she is an unreliable witness to the accident and to discredit her version of the accident in favor of the respondent.

ISSUES PRESENTED

ARGUMENT

I. The Court erred in denying the plaintiff's motion to set aside the verdict, since the evidence proved the accident could not have occurred in the manner alleged by the defendant, it being at the time impossible for an automobile to travel in the right shoulder of the roadway.

II. The Court erred in prohibiting the plaintiff from presenting evidence relevant to the speed at which the defendant's vehicle was traveling.

III. The Court committed plain error in charging the jury that they had unbridled discretion in determining their verdict.

QUESTIONS PRESENTED FOR REVIEW

I. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING THE PLAINTIFF'S MOTION TO SET ASIDE THE JURY VERDICT WHEN EVIDENCE PRESENTED BY HER SHOWED THE ACCIDENT COULD NOT HAVE OCCURRED IN THE MANNER ALLEGED BY THE DEFENDANT AND THAT A REASONABLE AND AN IMPARTIAL JURY COULD NOT HAVE BELIEVED THE DEFENDANT'S VERSION SINCE HER VERSION DID NOT EXPLAIN THE DAMAGE CAUSED TO THE PLAINTIFF'S VEHICLE AND THE DAMAGE SUSTAINED BY BOTH VEHICLES IS INCONSISTENT WITH THE VERSION ADVANCED BY THE DEFENDANT?

II. THE APPELLATE COURT OVERLOOKED AND DID NOT RULE ON THE ISSUE RAISED IN THE OPENING BRIEF THAT THE MERE EVIDENCE THAT THE SHOULDER OF THE ROAD IN THE AREA CANNOT BE TRAVERSED BY A VEHICLE SHOWS THAT THE DEFENDANT'S VERSION OF THE ACCIDENT WAS NOT SUPPORTED BY FACTS.

III. "NOT ONLY WAS THE DEFENDANT'S VERSION CONSISTENT WITH THE DAMAGE SUSTAINED BY BOTH VEHICLES, IT ALSO WAS BOLSTERED BY FRINTON'S TESTIMONY THAT IN HIS OPINION, THE ACCIDENT OCCURRED IN THE MANNER DESCRIBED BY THE DEFENDANT." MENON V. DUX, 81 CONN.

APP. 174 (2004). IS IT FAIR, THE TESTIMONY OF A POLICE OFFICER WAS GIVEN A GREATER WEIGHT THAN A TESTIMONY OF THE PLAINTIFF'S MOTHER WHEN THE OFFICER WAS NOT PRESENT WHEN THE COLLISION OCCURRED IN CONTRAST TO THE MOTHER WHO OBSERVED HOW THE ACCIDENT OCCURRED AND HER VERSION "ESSENTIALLY MIRRORED THAT OF THE PLAINTIFF"? ID. P. 175.

IV. WHEN THE POLICE OFFICER'S TESTIMONY SHOWED HE HAD NOT BEEN AN IMPARTIAL PARTY TO THE ACCIDENT, AS HE WAS SUPPOSED TO BE AS A POLICE OFFICER, AND AND HE HAD TAKEN THE SIDE OF THE DEFENDANT AS HIS TESTIMONY SHOWED THAT HE MADE STATEMENTS CONTRARY TO WHAT THE PLAINTIFF CONVEYED TO HIM AT THE ACCIDENT SCENE AND FROM THE THE ISSUES THE PLAINTIFF RAISED AT THE TRIAL AND ALSO IN HIS POLICE ACCIDENT REPORT, HE OMITTED DETAILS THE PLAINTIFF SAID AND EXCUPLATORY EVIDENCE AND HE ADMITTED HE MADE ERRORS IN HIS REPORT AND HE ADMITTED HE RELIED UPON THE DEFEDANT'S WORDS, IS IT FAIR TO CONSIDER THE OFFICER A RELIABLE WITNESS TO THE ACCIDENT?

V. "[T]HE PLAINTIFF'S TESTIMONY ROUNDLY CONTRADICTED THAT OF THE DEFENDANT, AND THE JURY REASONABLY COULD HAVE ELECTED TO BELIEVE THE PLAINTIFF AND NOT THE DEFENDANT." MENON V. DUX, 81

CONN. APP. 174 (2004). IS IT FAIR, IN THIS CASE, WHEN ONE OF THE PARTIES, THE PLAINTIFF, IS A MINORITY TO HAVE NOT A SINGLE MINORITY JUROR FOR THE TRIAL THOUGH HAVING MINORITY JURORS MAY NOT GUARANTEE A VERDICT IN FAVOR OF THE PLAINTIFF AS BOTH PARTIES SHOULD BE SIMILARILY SITUATED TO ENSURE A VERDICT COULD BE REACHED IN A FAIR MANNER?

VI. IN REFERENCE TO THE CHARGING CONFERENCE CONDUCTED BY THE TRIAL COURT, DID THE TRIAL COURT ERR IN HOLDING THAT IT WOULD NOT CHARGE THE JURY ON SOME OF THE STATUTORY PROVISIONS INVOLVED IN THE COMPLAINT?

VII. THE OPENING BRIEF RAISED TWO CHARGES GIVEN BY THE TRIAL COURT JUDGE, WHICH ARE PLAIN AND PREJUDICAL ERRORS. HOWEVER, THE APPELLATE COURT OVERLOOKED AND DID NOT RULE ON ONE OF THE CHARGES THAT WAS RAISED IN THE BRIEF.

VIII. DID THE PLAINTIFF'S UNPRESERVED CHALLENGE REGARDING THE TRIAL COURT'S JURY INSTRUCTIONS WARRANT A PLAIN ERROR REVIEW WHEN THE INSTRUCTIONS GAVE THE JURY UNBRIDLED DISCRETION TO DO WHATEVER THEY WANTED IN THE CASE WITH THE ASSURANCE THAT THEY NEED NOT HAVE TO WORRY ABOUT THE VERDICT?

IX. SHOULD THE PLAINTIFF BE PENALIZED FOR HER COUNSEL'S ACTION WHEN THE PLAINTIFF'S COUNSEL ACQUIESCED TO THE TRIAL COURT'S RULING ABOUT THE COST TO REPAIR THE DAMAGE OF THE PLAINTIFF'S VEHICLE AS THE PLAINTIFF RESPONDED, "YES" IN RESPONSE TO HER COUNSEL'S QUESTION AND NOT "NO", OR "I CAN'T RECALL," OR "I'M NOT SURE"....?

X. DID THE APPELLATE COURT ERR IN DECLINING TO REVIEW THE PLAINTIFF'S CLAIM ABOUT THE COST TO REPAIR HER VEHICLE, STATING THAT THE CLAIM WAS RAISED FOR THE FIRST TIME ON APPEAL WHEN THE ISSUE WAS ADEQUATELY RAISED ON THE RECORD TO WARRANT REVIEW ON APPEAL?

XI. IS IT FAIR TO STATE, "ALTHOUGH THE PLAINTIFF ATTEMPTED TO INTRODUCE TESTIMONY OF THE EXTENT OF THE DAMAGE TO HER VEHICLE, SHE DID NOT ARTICULATE ANY EVIDENTIARY RULE ON WHICH SUCH TESTIMONY WAS ADMISSIBLE" (MENON V. DUX, 81 CONN. APP. 171 (2004)) AND "THE PLAINTIFF DID NOT SEEK REVIEW OF THE UNPRESERVED GROUND UNDER THE RUBRIC OF PLAIN ERROR'' (ID. P. 175) AND "[W]E THEREFORE DO NOT CONSIDER WHETHER REVIEW OF THE CLAIM IS WARRANTED UNDER THE PLAIN ERROR DOCTRINE"? (ID. P.175).

XII. IS IT FAIR TO STATE, "THE VERSION OF EVENTS ADVANCED BY THE DEFENDANT AND ACCEPTED BY THE JURY WAS ADEQUATELY SUPPORTED BY THE RECORD," (MENON V. DUX, 81 CONN. APP. 174 (2004)) WHEN THE DEFENDANT HAD PROFESSED AN INABILITY TO RECALL A NUMBER OF DETAILS PERTAINING TO THE ACCIDENT AND AN EVASIVENESS ABOUT THEM?

Portion of the Trial Transcript of the Charge given by the Court on 9/18/02.
Page 161, line 19-27; p. 162, line 1-27; p. 163, line 1-2.

Page 161, line 19-27.

Ladies and gentlemen, if there's false testimony, now you may also bear in mind that if you find that any witness has deliberately testified falsely on any material point, you may take that in consideration in determining whether he or she has testified falsely on other points.

If you find a witness has not testified accurately with respect to one fact, that does not necessarily mean that he or she is wrong on every

Page 162, line 1-27.

other point. A witness may be honestly mistaken on one point in his or her testimony, and be accurate on others.

But if you find that a witness has deliberately lied on any material point, you may be suspicious of his or her testimony on all points. Under those circumstances, you may disbelieve his or her entire testimony according to your own sound judgment.

Assessing the credibility and testimony of witnesses might be described simply as the plausibility of it. That is, does it ring true? Are there inconsistencies in it? How did it fit with other evidence that you heard in this particular case?

It is your duty as jurors to harmonize the evidence insofar as it reasonably can be done. You are to test the evidence of the several witnesses by your own knowledge of human nature and the motives which influence and control human nature, using the same good judgment which you apply to facts which are daily presenting themselves for your consideration and decision.

- Ladies and gentlemen, if there is a party who made a prior statement in a pleading or in an answer to an interrogatory or deposition which is inconsistent with the court testimony, you may
Page 163, line 1-2.
consider this as affecting the party's credibility adversely.

TRIAL TRANSCRIPT (9/17/2002)

Page 9, line 26-27.

And, of course, if the attorneys during the trial think I made a prejudicial error, they have

Page 10, line 1-18.

a right to have a transcript made, go up to the appellate court, and the appellate court can say I'm wrong, but then the appellate court can be reviewed by our supreme court in Connecticut, who can say the appellate court is wrong. And then everybody in certain instances can go down to Washington, and then the Supreme Court can say we're all wrong or we're all right, but then Congress can change the laws, so everything balances out in the end, except when it comes to a jury.

A jury's verdict is absolutely final. You cannot make a mistake if I accept your verdict, because the fact pattern is not reviewed. So, you folks never have to worry about doing the right thing. If your verdict is accepted by the Court, it is the correct verdict and it can never be over put -- changed. The verdict is never changed.

Page 16, Line 7-10

There are other things by their very nature that are said or done to declare a mistrial just like that. If that happens, of course, we've got to start all over.

Page 25, Line 18-26.

I said, well, look, as long as you're not holding it on appellate review -- I don't want you to go up to a higher court and say I let anyone sleep during the testimony, because it would be an automatic reverse.

And the judicial counsel who sits in judgment of me as a general person wouldn't be too happy for my performance to be letting any jurors sleep. So I said, okay, we'll see.

TRIAL TRANSCRIPT (9/18/2002)

Page 47, Line 19-27 and Page 48, Line 1-6.

Page 47, Line 19-27.

THE COURT: Well, not now. Then they tell me that they are automatic dialing over the internet, so it can flash up to Hartford. So, I guess the Chief Justice or whatever he is, he can watch what's going on in the courtroom.

They say, however, Hartford can't turn it on, nor the marshals can't turn it on. But we'd better be careful. Of course, if we had our modern units, but we are using a tape here as

Page 48, Line 1-6.

opposed to the new equipment, the new equipment goes to Hartford and everything we say is recorded and it's kept for eternity.

So, when we're on the record, I always praise Hartford. When we're off the record, I don't say anything.

Page 101, Line 17-22.

.... They say the actual image goes to Hartford immediately digitally, the same as what we would be doing if we had our machine on. It's kept for 90 days; and then I guess if there's no problem, it will be released. So, I've got 90 days to see myself.

Page 157, Line 10-17.

THE CHARGE

THE COURT: All right, ladies and gentlemen, that brings us up to the point that I have to charge you on the principles of law. And as I said to you, it's a rather long, complicated statement. It's usually for the best interest of the appellate court to see whether we made a mistake at law.

Page 159, Line 1-11.

Principles of law, of course, are binding for you, and you must bring them in your jury room and apply them. And, of course, the reason for that is we cannot go into your room. Once you start to deliberate and ask to see whether you're obeying the law the judge gave you.

So, the appellate court and I assume that the principles of law as it relates to the rules of the law, you will bring that and you will apply that to the evidence, and that will reach your verdict.

Persons Killed or Injured and Fatality and Injury Rates per Population, Licensed Drivers, Registered Vehicles, and Vehicle Miles Traveled, 1966-2002

Killed									
Year	Fatalities	Resident Population (Thousands)	Fatality Rate per 100,000 Population	Licensed Drivers (Thousands)	Fatality Rate per 100,000 Licensed Drivers	Registered Motor Vehicles (Thousands)	Fatality Rate per 100,000 Registered Vehicles	Vehicle Miles Traveled (Billions)	Fatality Rate per 100 Million VMT
1966	50,894	196,560	25.89	100,998	50.39	95,703	53.18	926	5.50
1967	50,724	198,712	25.53	103,172	49.16	98,859	51.31	964	5.26
1968	52,725	200,706	26.27	105,410	50.02	102,987	51.20	1,016	5.19
1969	53,543	202,677	26.42	108,306	49.44	107,412	49.85	1,062	5.04
1970	52,627	205,052	25.67	111,543	47.18	111,242	47.31	1,110	4.74
1971	52,542	207,661	25.30	114,426	45.92	116,330	45.17	1,179	4.46
1972	54,589	209,896	26.01	118,414	46.10	122,557	44.54	1,260	4.33
1973	54,052	211,909	25.51	121,546	44.47	130,025	41.57	1,313	4.12
1974	45,196	213,854	21.13	125,427	36.03	134,900	33.50	1,281	3.53
1975	44,525	215,973	20.62	129,791	34.31	126,153	35.29	1,328	3.35
1976	45,523	218,035	20.88	134,036	33.96	130,793	34.81	1,402	3.25
1977	47,878	220,239	21.74	138,121	34.66	134,514	35.59	1,467	3.26
1978	50,331	222,585	22.61	140,844	35.74	140,374	35.85	1,545	3.26
1979	51,093	225,055	22.70	143,284	35.66	144,317	35.40	1,529	3.34
1980	51,091	227,225	22.48	145,295	35.16	146,845	34.79	1,527	3.35
1981	49,301	229,466	21.49	147,075	33.52	149,330	33.01	1,555	3.17
1982	43,945	231,664	18.97	150,234	29.25	151,148	29.07	1,595	2.76
1983	42,589	233,792	18.22	154,389	27.59	153,830	27.69	1,653	2.58
1984	44,257	235,825	18.77	155,424	28.48	158,900	27.85	1,720	2.57
1985	43,825	237,924	18.42	156,868	27.94	166,047	26.39	1,775	2.47
1986	46,087	240,133	19.19	159,486	28.90	168,545	27.34	1,835	2.51
1987	46,390	242,289	19.15	161,816	28.67	172,750	26.85	1,921	2.41
1988	47,087	244,499	19.26	162,854	28.91	177,455	26.53	2,026	2.32
1989	45,582	246,819	18.47	165,554	27.53	181,165	25.16	2,096	2.17
1990	44,599	249,464	17.88	167,015	26.70	184,275	24.20	2,144	2.08
1991	41,508	252,153	16.46	158,995	24.56	186,370	22.27	2,172	1.91
1992	39,250	255,030	15.39	173,125	22.67	184,938	21.22	2,247	1.75
1993	40,150	257,783	15.58	173,149	23.19	188,350	21.32	2,296	1.75
1994	40,716	260,327	15.64	175,403	23.21	192,497	21.15	2,358	1.73
1995	41,817	262,803	15.91	176,628	23.68	197,065	21.22	2,423	1.73
1996	42,065	265,229	15.86	179,539	23.43	201,631	20.86	2,486	1.69
1997	42,013	267,784	15.69	182,709	22.99	203,568	20.64	2,562	1.64
1998	41,501	270,248	15.36	184,861	22.45	208,076	19.95	2,632	1.58
1999	41,717	272,691	15.30	187,170	22.29	212,685	19.61	2,691	1.55
2000	41,945	282,224	14.86	190,625	22.00	217,028	19.33	2,747	1.53
2001	42,196	285,318	14.79	191,276	22.06	221,230	19.07	2,797	1.51
2002	42,815	288,369	14.85	194,296	22.04	225,685	18.97	2,856	1.50

Injured									
Year	Injured	Resident Population (Thousands)	Injury Rate per 100,000 Population	Licensed Drivers (Thousands)	Injury Rate per 100,000 Licensed Drivers	Registered Motor Vehicles (Thousands)	Injury Rate per 100,000 Registered Vehicles	Vehicle Miles Traveled (Billions)	Injury Rate per 100 Million VMT
1988	3,416,000	244,499	1,397	162,854	2,098	177,455	1,925	2,026	169
1989	3,284,000	246,819	1,330	165,554	1,984	181,165	1,813	2,096	157
1990	3,231,000	249,464	1,295	167,015	1,934	184,275	1,753	2,144	151
1991	3,097,000	252,153	1,228	168,995	1,833	186,370	1,662	2,172	143
1992	3,070,000	255,030	1,204	173,125	1,773	184,938	1,660	2,247	137
1993	3,149,000	257,783	1,222	173,149	1,819	188,350	1,672	2,296	137
1994	3,266,000	260,327	1,255	175,403	1,862	192,497	1,697	2,358	139
1995	3,465,000	262,803	1,319	176,628	1,962	197,065	1,758	2,423	143
1996	3,483,000	265,229	1,313	179,539	1,940	201,631	1,728	2,486	140
1997	3,348,000	267,784	1,250	182,709	1,832	203,568	1,644	2,562	131
1998	3,192,000	270,248	1,181	184,861	1,727	208,076	1,534	2,632	121
1999	3,236,000	272,691	1,187	187,170	1,729	212,685	1,522	2,691	120
2000	3,189,000	282,224	1,130	190,625	1,673	217,028	1,469	2,747	116
2001	3,033,000	285,318	1,063	191,276	1,585	221,230	1,371	2,797	108
2002	2,926,000	288,369	1,015	194,296	1,506	225,685	1,296	2,856	102

Sources: Vehicle Miles of Travel and Licensed Drivers—Federal Highway Administration; Registered Vehicles, 1966-1974—Federal Highway Administration; Registered Vehicles, 1975-2002—R.L. Polk & Co. and Federal Highway Administration; Population—U.S. Bureau of the Census; Traffic Deaths, 1966-1974—National Center for Health Statistics, D.H.H.S., State Accident Summaries (adjusted to 30-day traffic deaths by NHTSA); Traffic Deaths, 1975-2002—Fatality Analysis Reporting System (FARS), NHTSA, 30-day traffic deaths; Injured, 1988-2002—General Estimates System (GES), NHTSA. Injury data not available for years before 1988.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, chapter 1, Trends (Washington, D. C.: Government Printing Office, 2004), page 15, table 2.

Reprinted from Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 620 (Washington, D. C. 2004).

Persons Killed or Injured by Person Type and Vehicle Type, 1975-2002

Year	Person Type											Total
	Occupants by Vehicle Type							Nonmotorists				
	Passenger Cars	Light Trucks	Large Trucks	Motorcycles	Buses	Other/ Unknown	Total	Pedestrian	Pedalcyclist	Other/ Unknown	Total	
							Killed					
1975	25,929	4,856	961	3,189	53	937	*35,925*	7,516	1,003	81	*8,600*	**44,525**
1976	26,166	5,438	1,132	3,312	73	981	*37,102*	7,427	914	80	*8,421*	**45,523**
1977	26,782	5,976	1,287	4,104	42	959	*39,150*	7,732	922	74	*8,728*	**47,878**
1978	28,153	6,745	1,395	4,577	41	622	*41,533*	7,795	892	111	*8,798*	**50,331**
1979	27,808	7,178	1,432	4,894	39	579	*41,930*	8,096	932	135	*9,163*	**51,093**
1980	27,449	7,486	1,262	5,144	46	540	*41,927*	8,070	965	129	*9,164*	**51,091**
1981	26,645	7,061	1,133	4,906	56	603	*40,424*	7,837	936	104	*8,877*	**49,301**
1982	23,330	6,359	944	4,453	35	525	*35,646*	7,331	883	85	*8,299*	**43,945**
1983	22,979	6,202	982	4,265	53	362	*34,843*	6,826	839	81	*7,746*	**42,589**
1984	23,620	6,496	1,074	4,608	46	440	*36,284*	7,025	849	99	*7,973*	**44,257**
1985	23,212	6,689	977	4,564	57	544	*36,043*	6,808	890	84	*7,782*	**43,825**
1986	24,944	7,317	926	4,566	39	442	*38,234*	6,779	941	133	*7,853*	**46,087**
1987	25,132	8,058	852	4,036	51	436	*38,565*	6,745	948	132	*7,825*	**46,390**
1988	25,808	8,306	911	3,662	54	429	*39,170*	6,870	911	136	*7,917*	**47,087**
1989	25,063	8,551	858	3,141	50	424	*38,087*	6,556	832	107	*7,495*	**45,582**
1990	24,092	8,601	705	3,244	32	460	*37,134*	6,482	859	124	*7,465*	**44,599**
1991	22,385	8,391	661	2,806	31	466	*34,740*	5,801	843	124	*6,768*	**41,508**
1992	21,387	8,098	585	2,395	28	387	*32,880*	5,549	723	98	*6,370*	**39,250**
1993	21,566	8,511	605	2,449	18	425	*33,574*	5,649	816	111	*6,576*	**40,150**
1994	21,997	8,904	670	2,320	18	409	*34,318*	5,489	802	107	*6,398*	**40,716**
1995	22,423	9,568	648	2,227	33	392	*35,291*	5,584	833	109	*6,526*	**41,817**
1996*	22,505	9,932	621	2,161	21	455	*35,695*	5,449	765	154	*6,368*	**42,065**
1997	22,199	10,249	723	2,116	18	420	*35,725*	5,321	814	153	*6,288*	**42,013**
1998	21,194	10,705	742	2,294	38	409	*35,382*	5,228	760	131	*6,119*	**41,501**
1999	20,862	11,265	759	2,483	59	447	*35,875*	4,939	754	149	*5,842*	**41,717**
2000	20,699	11,526	754	2,897	22	450	*36,348*	4,763	693	141	*5,597*	**41,945**
2001	20,320	11,723	708	3,197	34	458	*36,440*	4,901	732	123	*5,756*	**42,196**
2002	20,416	12,182	684	3,244	45	661	*37,232*	4,808	662	113	*5,583*	**42,815**
							Injured					
1988	2,585,000	478,000	37,000	105,000	15,000	4,000	*3,224,000*	110,000	75,000	8,000	*192,000*	**3,416,000**
1989	2,431,000	511,000	43,000	83,000	15,000	5,000	*3,088,000*	112,000	73,000	11,000	*196,000*	**3,284,000**
1990	2,376,000	505,000	42,000	84,000	33,000	4,000	*3,044,000*	105,000	75,000	7,000	*187,000*	**3,231,000**
1991	2,235,000	563,000	28,000	80,000	21,000	4,000	*2,931,000*	88,000	67,000	11,000	*166,000*	**3,097,000**
1992	2,232,000	545,000	34,000	65,000	20,000	12,000	*2,908,000*	89,000	63,000	10,000	*162,000*	**3,070,000**
1993	2,265,000	601,000	32,000	59,000	17,000	4,000	*2,978,000*	94,000	68,000	9,000	*171,000*	**3,149,000**
1994	2,364,000	631,000	30,000	57,000	16,000	4,000	*3,102,000*	92,000	62,000	9,000	*164,000*	**3,266,000**
1995	2,469,000	722,000	30,000	57,000	19,000	4,000	*3,303,000*	86,000	67,000	10,000	*162,000*	**3,465,000**
1996	2,458,000	761,000	33,000	55,000	20,000	4,000	*3,332,000*	82,000	58,000	11,000	*151,000*	**3,483,000**
1997	2,341,000	755,000	31,000	53,000	17,000	6,000	*3,201,000*	77,000	58,000	11,000	*146,000*	**3,348,000**
1998	2,201,000	763,000	29,000	49,000	16,000	4,000	*3,061,000*	69,000	53,000	8,000	*131,000*	**3,192,000**
1999	2,138,000	847,000	33,000	50,000	22,000	7,000	*3,097,000*	85,000	51,000	3,000	*140,000*	**3,236,000**
2000	2,052,000	887,000	31,000	58,000	18,000	10,000	*3,055,000*	78,000	51,000	5,000	*134,000*	**3,189,000**
2001	1,927,000	861,000	29,000	60,000	15,000	9,000	*2,901,000*	78,000	45,000	8,000	*131,000*	**3,033,000**
2002	1,805,000	879,000	26,000	65,000	19,000	6,000	*2,800,000*	71,000	48,000	7,000	*126,000*	**2,926,000**

*Total for 1996 includes 2 fatalities of unknown person type.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, chapter 1, Trends (Washington, D. C.: Government Printing Office, 2004), page 18, table 4.

Reprinted from Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 620 (Washington, D. C. 2004).

Drivers Involved in Crashes and Involvement Rates per Licensed Driver by Sex and Crash Severity, 1975-2002

Year	Sex						Total (>15 Years Old)*		
	Male (>15 Years Old)			Female (>15 Years Old)					
	Number Involved in Crashes	Licensed Drivers (Thousands)	Involvement Rate per 100,000 Licensed Drivers	Number Involved in Crashes	Licensed Drivers (Thousands)	Involvement Rate per 100,000 Licensed Drivers	Number Involved in Crashes	Licensed Drivers (Thousands)	Involvement Rate per 100,000 Licensed Drivers
Drivers in Fatal Crashes									
1975	45,087	70,435	64.01	9,356	59,233	15.80	54,445	129,668	41.99
1976	45,091	72,452	62.24	9,953	61,458	16.19	55,045	133,910	41.11
1977	48,548	74,385	65.27	10,775	63,591	16.94	59,324	137,976	43.00
1978	51,665	75,504	68.43	11,221	65,177	17.22	62,887	140,681	44.70
1979	52,208	76,458	68.28	11,308	66,695	16.95	63,518	143,152	44.37
1980	50,921	77,135	66.02	11,353	68,067	16.68	62,277	145,202	42.89
1981	49,838	77,831	64.03	11,396	69,142	16.48	61,238	146,972	41.67
1982	43,877	78,484	55.91	10,579	71,627	14.77	54,462	150,111	36.28
1983	42,329	80,823	52.37	10,854	73,440	14.78	53,184	154,263	34.48
1984	44,213	80,916	54.64	11,806	74,398	15.87	56,022	155,315	36.07
1985	44,290	81,537	54.32	12,031	75,231	15.99	56,322	156,769	35.93
1986	46,083	82,740	55.70	12,603	76,651	16.44	58,688	159,390	36.82
1987	46,337	83,939	55.20	13,492	77,789	17.34	59,829	161,728	36.99
1988	46,840	84,099	55.70	13,814	78,661	17.56	60,658	162,760	37.27
1989	44,941	85,356	52.65	13,927	80,160	17.37	58,870	165,516	35.57
1990	43,802	85,769	51.07	13,586	81,203	16.73	57,393	166,972	34.37
1991	40,288	86,630	46.51	12,716	82,300	15.45	53,007	168,930	31.38
1992	38,186	88,363	43.21	12,492	84,716	14.75	50,682	173,079	29.28
1993	39,118	87,974	44.47	12,960	85,138	15.22	52,080	173,112	30.08
1994	39,784	89,165	44.62	13,449	86,183	15.61	53,238	175,347	30.36
1995	40,799	89,184	45.75	14,043	87,386	16.07	54,847	176,570	31.06
1996	40,899	90,503	45.19	14,723	89,007	16.54	55,624	179,510	30.99
1997	40,594	91,888	44.18	14,816	90,789	16.32	55,412	182,677	30.33
1998	40,433	93,023	43.47	14,967	91,805	16.30	55,404	184,828	29.98
1999	40,639	94,149	43.16	14,717	92,988	15.83	55,359	187,137	29.58
2000	41,443	95,782	43.27	14,682	94,816	15.48	56,126	190,598	29.45
2001	41,548	95,779	43.38	14,829	95,471	15.53	56,380	191,250	29.48
2002	41,740	97,447	42.83	14,788	96,820	15.27	56,530	194,267	29.10
Drivers in Injury Crashes									
1988	2,423,000	84,099	2,881	1,485,000	78,661	1,887	3,907,000	162,760	2,401
1989	2,347,000	85,356	2,749	1,446,000	80,160	1,804	3,793,000	165,516	2,291
1990	2,285,000	85,769	2,664	1,458,000	81,203	1,795	3,743,000	166,972	2,242
1991	2,171,000	86,630	2,506	1,380,000	82,300	1,677	3,551,000	168,930	2,102
1992	2,114,000	88,363	2,392	1,439,000	84,716	1,699	3,553,000	173,079	2,053
1993	2,144,000	87,974	2,437	1,468,000	85,138	1,724	3,612,000	173,112	2,086
1994	2,264,000	89,165	2,539	1,574,000	86,183	1,826	3,838,000	175,347	2,189
1995	2,378,000	89,184	2,667	1,687,000	87,386	1,931	4,066,000	176,570	2,303
1996	2,378,000	90,503	2,627	1,711,000	89,007	1,922	4,089,000	179,510	2,278
1997	2,296,000	91,888	2,499	1,643,000	90,789	1,809	3,939,000	182,677	2,156
1998	2,158,000	93,023	2,319	1,576,000	91,805	1,717	3,734,000	184,828	2,020
1999	2,134,000	94,149	2,267	1,609,000	92,988	1,730	3,743,000	187,137	2,000
2000	2,192,000	95,782	2,289	1,573,000	94,816	1,659	3,765,000	190,598	1,975
2001	2,090,000	95,779	2,182	1,547,000	95,471	1,620	3,637,000	191,250	1,902
2002	2,000,000	97,447	2,052	1,481,000	96,820	1,530	3,482,000	194,267	1,792
Drivers in Property-Damage-Only Crashes									
1988	5,013,000	84,099	5,961	2,816,000	78,661	3,580	7,829,000	162,760	4,810
1989	4,915,000	85,356	5,758	2,687,000	80,160	3,352	7,602,000	165,516	4,593
1990	4,733,000	85,769	5,519	2,677,000	81,203	3,296	7,410,000	166,972	4,438
1991	4,419,000	86,630	5,101	2,600,000	82,300	3,159	7,019,000	168,930	4,155
1992	4,316,000	88,363	4,885	2,530,000	84,716	2,987	6,847,000	173,079	3,956
1993	4,402,000	87,974	5,003	2,561,000	85,138	3,008	6,963,000	173,112	4,022
1994	4,695,000	89,165	5,265	2,828,000	86,183	3,282	7,523,000	175,347	4,290
1995	4,847,000	89,184	5,434	2,905,000	87,386	3,325	7,752,000	176,570	4,390
1996	4,888,000	90,503	5,400	2,968,000	89,007	3,335	7,856,000	179,510	4,376
1997	4,808,000	91,888	5,232	2,967,000	90,789	3,268	7,775,000	182,677	4,256
1998	4,634,000	93,023	4,982	2,902,000	91,805	3,162	7,536,000	184,828	4,078
1999	4,509,000	94,149	4,789	2,800,000	92,988	3,011	7,309,000	187,137	3,906
2000	4,559,000	95,782	4,760	2,904,000	94,816	3,062	7,463,000	190,598	3,915
2001	4,518,000	95,779	4,717	2,903,000	95,471	3,041	7,421,000	191,250	3,880
2002	4,436,000	97,447	4,552	2,999,000	96,820	3,098	7,435,000	194,267	3,827

*Total includes drivers (>15 years old) of unknown sex.
Source: Licensed Drivers—Federal Highway Administration.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, chapter 1, Trends (Washington, D. C.: Government Printing Office, 2004), page 19, table 5.

Reprinted from Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 620 (Washington, D. C. 2004).

Persons Killed or Injured, by Person Type and Injury Severity

Person Type	Persons Killed	Persons Injured by Injury Severity			Total Injured	Total Killed or Injured
		Incapacitating	Nonincapacitating	Other		
Vehicle Occupants						
Driver	26,549	228,000	526,000	1,165,000	1,920,000	1,946,000
Passenger	10,571	104,000	237,000	540,000	880,000	891,000
Unknown Occupant	112	*	*	*	*	*
Subtotal	*37,232*	*333,000*	*763,000*	*1,705,000*	*2,800,000*	*2,837,000*
Nonmotorists						
Pedestrian	4,808	15,000	26,000	30,000	71,000	75,000
Pedalcyclist	662	7,000	22,000	19,000	48,000	49,000
Other/Unknown	113	1,000	2,000	4,000	7,000	7,000
Subtotal	*5,583*	*23,000*	*50,000*	*53,000*	*126,000*	*131,000*
Total	42,815	356,000	813,000	1,757,000	2,926,000	2,969,000

*Less than 500.

Persons Killed or Injured, by Age and Injury Severity

Age (Years)	Persons Killed	Persons Injured by Injury Severity			Total Injured	Total Killed or Injured
		Incapacitating	Nonincapacitating	Other		
<5	607	7,000	17,000	38,000	62,000	63,000
5-9	607	9,000	30,000	49,000	88,000	88,000
10-15	1,328	18,000	47,000	88,000	153,000	155,000
16-20	6,277	61,000	161,000	281,000	503,000	509,000
21-24	4,415	40,000	97,000	176,000	312,000	317,000
25-34	6,860	63,000	142,000	335,000	540,000	547,000
35-44	6,776	56,000	118,000	306,000	479,000	486,000
45-54	5,657	46,000	86,000	229,000	361,000	366,000
55-64	3,508	24,000	51,000	137,000	213,000	216,000
65-74	2,809	16,000	35,000	67,000	118,000	120,000
>74	3,813	16,000	30,000	52,000	98,000	101,000
Total	*42,815	356,000	813,000	1,757,000	2,926,000	2,969,000

*Includes 158 fatalities of unknown age.

Persons Killed or Injured, by Sex and Injury Severity

Sex	Persons Killed	Persons Injured by Injury Severity			Total Injured	Total Killed or Injured
		Incapacitating	Nonincapacitating	Other		
Male	29,327	186,000	438,000	775,000	1,398,000	1,428,000
Female	13,474	170,000	375,000	983,000	1,527,000	1,541,000
Total	*42,815	356,000	813,000	1,757,000	2,926,000	2,969,000

*Includes 14 fatalities of unknown sex.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, chapter 4, People (Washington, D. C.: Government Printing Office, 2004), page 86, table 53, table 54, table 55.

Reprinted from Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 620 (Washington, D. C. 2004).

2002 National Statistics

Police-Reported Motor Vehicle Traffic Crashes	
Fatal	38,309
Injury	1,929,000
Property Damage Only	4,348,000
Total	**6,316,000**

Traffic Crash Victims	Killed	Injured
Occupants		
Drivers	26,549	1,920,000
Passengers	10,571	880,000
Unknown	112	—
Nonmotorists		
Pedestrians	4,808	71,000
Pedalcyclists	662	48,000
Other/Unknown	113	7,000
Total	**42,815**	**2,926,000**

Other National Statistics	
Vehicle Miles Traveled	2,855,756,000,000
Resident Population	288,368,698
Registered Vehicles	225,684,815
Licensed Drivers	194,295,633
Economic Cost of Traffic Crashes (2000) (estimate for reported and unreported crashes)	$230.6 billion

National Rates: Fatalities	
Fatalities per 100 Million Vehicle Miles Traveled	1.50
Fatalities per 100,000 Population	14.85
Fatalities per 100,000 Registered Vehicles	18.97
Fatalities per 100,000 Licensed Drivers	22.04

National Rates: Injured Persons	
Injured Persons per 100 Million Vehicle Miles Traveled	102
Injured Persons per 100,000 Population	1,015
Injured Persons per 100,000 Registered Vehicles	1,296
Injured Persons per 100,000 Licensed Drivers	1,506

Sources: Crashes, Fatalities, Injuries, and Costs—National Highway Traffic Safety Administration.
Population—U.S. Bureau of the Census.
Vehicle Miles Traveled—Federal Highway Administration.
Registered Vehicles—R.L. Polk & Co. and Federal Highway Administration.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System (Washington, D. C.: Government Printing Office, 2004), page i.

Reprinted from Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 620 (Washington, D. C. 2004).

In 2002, the Nation's crash fatality rate per 100 million vehicle miles of travel reached an historic low of 1.50. Although this significant event is the result of much progress in reducing the number of deaths and injuries on our Nation's highways, total fatalities increased just slightly in 2002, reaching the highest level since 1990. Over 6.3 million police-reported motor vehicle crashes still occurred on our highways in 2002 -- one every 5 seconds. On average, a person was injured in these crashes every 11 seconds, and someone was killed every 12 minutes.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, Administrator's Message (Washington, D. C.: Government Printing Office, 2004), page iii.

Reprinted from Traffic Safety Facts 2002: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 620 (Washington, D. C. 2004).

Speeding is one of the most prevalent factors contributing to traffic crashes. The economic cost to society of speeding-related crashes is estimated by NHTSA to be $40.4 billion per year. In 2002, speeding was a contributing factor in 31 percent of all fatal crashes, and 13,713 lives were lost in speeding-related crashes.

Motor vehicle crashes cost society as estimated $7,300 per second. The total economic cost of crashes was estimated at $230.6 billion in 2000. The 2000 costs of speeding-related crashes were estimated to be $40.4 billion -- $76,865 per minute or $1,281 per second.

Speeding reduces a driver's ability to steer safely around curves or objects in the roadway, extends the distance necessary to stop a vehicle, and increases the distance a vehicle travels while the driver reacts to a dangerous situation.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Public Information Fact Sheet on Motor Vehicle and Traffic Safety, Speeding (Washington, D. C.: Government Printing Office, 2004), page 1.

Reprinted from Traffic Safety Facts 2002: A Public Information Fact Sheet on Motor Vehicle and Traffic Safety, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 616 (Washington, D. C. 2004).

Motor vehicle travel is the primary means of transportation in the United States, providing an unprecedented degree of mobility. Yet for all its advantages, deaths and injuries resulting from motor vehicle crashes are the leading cause of death for persons of every age from 2 through 33 years old (based on 2000 data). Traffic fatalities account for more than 90 percent of transportation-related fatalities.

In 2002, 42,815 people were killed in the estimated 6,316,000 police-reported motor vehicle traffic crashes, 2,926,000 people were injured, and 4,348,00 crashes involved property damage only.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Public Information Fact Sheet on Motor Vehicle and Traffic Safety, Overview, Introduction (Washington, D. C.: Government Printing Office, 2004), page 1.

Reprinted from Traffic Safety Facts 2002: A Public Information Fact Sheet on Motor Vehicle and Traffic Safety, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 612 (Washington, D. C. 2004).

The fatality rate per 100 million vehicle miles of travel in 2002 was 1.51.

The injury rate per 100 million vehicle miles of travel in 2002 was 103.

The fatality rate per 100,000 population was 14.85 in 2002, slightly higher than the 2001 rate of 14.79.

An average of 117 persons died each day in motor vehicle crashes in 2002 – one every 12 minutes.

Motor vehicle crashes are the leading cause of death for every age from 2 through 33 years old.

Vehicle occupants accounted for 87 percent of traffic fatalities in 2002.

The remaining 13 percent were pedestrians, pedalcyclists, and other nonoccupants.

Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis, Traffic Safety Facts 2002: A Public Information Fact Sheet on Motor Vehicle and Traffic Safety, Overview, Summary (Washington, D. C.: Government Printing Office, 2004), page 1.

Reprinted from Traffic Safety Facts 2002: A Public Information Fact Sheet on Motor Vehicle and Traffic Safety, U.S. Department of Transportation, National Highway Traffic Safety Administration Publication DOT HS 809 612 (Washington, D. C. 2004).

PREJUDICIAL COMMENTS BY OPPOSING COUNSEL

The opposing counsel made prejudicial comments about the petitioner throughout the trial.

Trial Transcript, September 17, 2002

The Court instructed the jury as follows:
Page 14, Line 20-27 and Page 15, Line 1-8.

Page 14, Line 20-27.

Now, the attorneys, they're going to have a right to talk to you. It may be, basically, three times or four times. But just remember, attorneys do not give evidence. Unless the attorney takes the stand to take the oath, they cannot give evidence.

If they had to do that, they'd be disqualified usually trying the case, because you
Page 15, Line 1-8.
can't be a lawyer and offer evidence at the same time.

Sometimes on a very technical matter an attorney might take the stand; but, usually, unless an attorney's taken the stand, of course, they're not giving evidence. So, what you have to do is carefully listen to the attorneys when they speak.

Trial Transcript, September 17, 2002

Page 33, Line 17-19.

The plaintiff thought that that was -- the shoulder was a lane of traffic for cars. But you're going to hear evidence that that was indeed a shoulder.

Page 34, Line 8-9.
.... She never noticed the car coming from another direction when that impact occurred.

Page 38, Line 13-22.

They talked about what the plaintiff was doing in the shoulder. And you will hear testimony that the plaintiff was confused as to that being a moving lane of traffic, and she indeed believe it was a moving lane of traffic when this incident occurred.

So, at the end of this case, I will be asking you to return a verdict in favor of the defendant, Ms. Dux, because she did not cause this accident.

Page 96, Line 22-27.
Q Okay. And did you tell the police officer -- well, isn't it true that you told the police officer that you were driving in the shoulder of the roadway and you thought that was a moving lane for traffic?
A No. I never told the police officer such a thing like that.

Page 97, Line 1-5.
Q Isn't it true that you told Ms. Dux that you thought that that was your lane for traffic in the shoulder area, and that's the lane you were proceeding in at the time of the accident?
A No, I never made such a comment to Ms. Dux at all.

Trial Transcript, September 18, 2002

Page 95, Line 25-27, Page 96, Line 1-2

Page 95, Line 25-27.
Q Do you want your daughter to win this case?
A What question is that?
Q I want to know: Do you want your daughter to win
Page 96, Line 1-2.
the case against Ms. Dux?
A Yes.

The Court instructed the jury as follows:
Page 143, Line 26-27 and Page 144, Line 1-6.

Page 143, Line 26-27.
Ladies and gentleman, now comes the opportunity for the attorneys to stand and make
Page 144, Line 1-6.
their closing statements at least on the liability. And remember that attorneys do not give evidence. Just listen to their arguments, so you'll understand their argument. But evaluate that against the evidence that you heard in this case.

Page 147, Line 24-27 and Page 148, Line 1-11.
At the initial stages of this case, you heard the opening statement of plaintiff's counsel. And I just made some notes where she used the word "puzzling" where the car came from.

Page 148, Line 1-11.
I think at that time that was a good indication of her own client wasn't really sure what happened in this case, and that wasn't even presented to you at the opening statement.

She indicated something about it crossed her path. She didn't say she did a left turn, she didn't say she did a U-turn. She didn't say anything about speed or anything like that. So, I think it was more she wasn't sure herself or her client wasn't sure how things were going to unfold.

Page 148, Line 18-27 and Page 149, Line 1-17.

Based on what was said by the police officer about Ms. Menon moving her car, I think I couldn't have been any clearer on cross examination. Her car stopped immediately after the accident. She did not move her car. You know, when the police officer arrived, she had not moved her car. Her car was in the shoulder. Even Ms. Menon will agree to that. Her car was in the shoulder. There's a dispute as to how far in the shoulder maybe, but she certainly was in the shoulder.

Page 149, Line 1-17.

With regards to the police report and listing to Ms. Menon's mother as a witness, the officer wasn't even asked about her. There are things in the police report that are whited out. Nobody even inquired as to the role of her mother at the accident scene. So, there was not even any evidence of that.

But in any event, let's get back to what I set out with at the start. And I realize I highlighted those two important issues that I believe were pivotal to this case, is that Ms. Menon didn't see the car until the impact occurred. And also that this accident happened -- she was driving up the shoulder of the road, an emergency shoulder, a breakdown lane, thinking that it's a lane for moving traffic. And that's how this accident occurred.

Page 150, Line 2-22.

I think the evidence is very, very clear about that. What did Ms. Menon say? And I know you all heard this, and I emphasized it enough for sure, is, you know, she first saw Ms. Dux's car when the accident happened, on impact. It came from the left. I will give her that. Sure, it happened quickly. My client's vehicle did come from the left.

All of these things about 55 miles an hour, that's what she said, 55 miles an hour. You saw the photos and the damages to the car. Does that represent 55 miles an hour of damage? No. I'd suggest to you that that is not the case.

A U-turn, if someone is going 55 miles an hour -- and you can look at the diagram she drew. If someone is going 55 miles an hour and then doing a U-turn coming back -- I mean, I don't know if that would be physically possible to make such a maneuver like that. I would suggest that it would be off the road someway, and this accident never would have occurred.

Page 151, Line 14-27.

And it's interesting. You know, her mother kind of testified similarly. She was sitting here the whole time. She heard her daughter's testimony. She heard what her daughter was saying. I mean, she basically testified to the same thing. But, I mean, we all saw it. I asked her how fast did it take. She said a split second, the words out of her mouth, a split second.

Page 152, Line 1-27.

The Menon vehicle is proceeding up the shoulder westbound. The Dux vehicle is in front. We make a right turn; and, sure, the Dux vehicle was coming from the left, absolutely.

It's interesting. Ms. Menon didn't deny that she was behind the Dux vehicle when the accident happened, which is again consistent with the defendant's version of the accident.

Getting back to her mother, even His Honor inquired just to clarify the record. "Okay. When you saw the Dux vehicle, did it happen quickly?" or something along those lines, basically reiterating what I had said. And she agreed. And it wasn't until Attorney Engstrom led her with the question, "Well, didn't you see it two or three seconds beforehand?"

"Oh, yes, that's what I saw. That's what I saw."

So, I mean, her initial reaction to my questions on cross and His Honor's questions was a split second. She didn't see anything. I really don't think that is believable or credible.

But in any event, going to the police officer, that diagram could not be any clearer. I think that is a very reasonable explanation of how this accident happened. I mean, it really made sense.

Page 153, Line 1-27.

In his initial report, he puts my client going left. I mean, if you look at the diagram, he clearly has us going right. And I think it's very believable that he did -- you know, he may not be the brightest light bulb in the bag, but for sure he drew that diagram of us going right, and there's no question about that, Ms. Dux's vehicle making a right turn into that driveway.

I would suggest to you the way this whole issue came up in the lawsuit was more of the initial police report has my client making a left turn, even though the diagram says differently. There's also a line in there about direction of travel. He has Vehicle No. 1 going west, and Vehicle No. 2 going west.

I mean, the police officer, if he said it was making a left turn, that means it would be going across the traffic, not towards the Ethan Allen. Inn.

But the bottom line is the officer is not on trial here. I mean, that's -- he's just reporting what he believed to be the conditions existing at the time.

The impact of the vehicles, if you look at the photographs, it's very consistent with Ms. Dux's version of the accident. Ms. Menon is behind, Ms. Dux is here, she goes to make a right

Page 154, Line 1-27.

turn. And look where the -- it's the right side of the Dux vehicle and the left front of the Menon vehicle. And it's like a puzzle that fits perfectly.

I mean, that's how this accident happened. There's none of this coming front end damage to the left or such. I mean, that is very reasonable explanation.

I mean, as I said in my opening, I mean, the impact, she didn't see anything until the time. To suggest otherwise that she saw something just isn't credible or believable.

I also said this accident happened when she was coming up the shoulder. I mean, if you look at the damage to the cars, the photographs, you know, Ms. Dux's testimony herself, it makes sense. She spoke, she knew where she was going, she knew exactly what she was doing, and this accident happened as she's coming up the right shoulder.

Now, one last point I just want to make, though, the basis of the plaintiff's claim against Ms. Dux is somehow she was proceeding eastbound. There is absolutely no reasonable evidence that Ms. Dux was traveling eastbound. She had no reason to be traveling eastbound.

She started her journey in a westbound direction, she knew where she was going. To Page 155, Line 1-27.
suggest she was going eastbound is just totally unbelievable. She's going westbound at the time. But they was you to believe that she was somehow going eastbound making a turn. And I suggest to you there is no evidence of that, no credible evidence of that. Even though they say it, it's not credible. It's not a believable part of their story.

His Honor will be explaining to you the law of car cases as we told you in jury selection. And he will be explaining to you how to find if Ms. Dux was negligent for the happening of this accident.

I suggest to you that the evidence overwhelmingly supports the conclusion that she was not responsible for this accident. And on behalf of Ms. Dux, I suggest and request that you render a verdict in favor of her of zero percent negligence. She was not responsible for this accident.

Thank you very much.

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Page 155, Line 24-27.

PLAINTIFF'S RESPONSE

Ms. Engstrom: I don't have too much to add. I think what counsel for the defense just said was that Ms. Menon's mother is not to be believed, because her testimony was Ms. Menon's mother said that she talked to Ms. Dux after the accident, and Ms. Dux told her that she had an interview at Ethan Allen, and that she was late. She testified that that's why Ms. Dux was going to Ethan Allen. And therefore, she was late, she made a fast turn into Ethan Allen, and she didn't look at what was coming toward her.

So, you know, if you want to -- those are your choices. That's the evidence you've heard today.

In reference to Ms. Menon's car being behind Ms. Dux, Ms. Menon testified that her car was behind. She told the police officer her car was behind, because in terms of the layout of the cars and the accident scene, Ms. Dux's car was in front of hers. So, that was the reference to front and behind.

Also, Ms. Menon did not see the accident report. When you're interviewed by the officer, you don't see the accident report for a week or so. So, she didn't know what the diagram was going to be like. And she apparently learned when she got the accident report that this diagram was not at all what she had described to the officer. And so she called.

When you look at the report, you'll see what

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she told the officer, that Ms. Dux turned left in front of her.

Thank-you.

Strauder v. West Virginia, 100 U.S. 303 (1880)

The statute of the West Virginia, which, in effect, singles out and denies to colored citizens the right and privilege of participating in the administration of the law, as jurors, because of their color, though qualified in all other respects, is, practically, a brand upon them, and a discrimination against them which is forbidden by the amendment. It denies to such citizens the equal protection of the laws, since the constitution of juries is a very essential part of the protection which the trial by jury is intended to secure. The very idea of a jury is that it is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of persons having the same legal status in society as that which he holds. *Strauder v. West Virginia,* 100 U.S. 303 (1880).

The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others. *Strauder v. West Virginia,* 100 U.S. 303 (1880).

Taylor v. Louisiana, 419 U.S. 522 (1975)

[T]he Court has unambiguously declared that the American concept of the jury trial contemplates a jury drawn from a fair cross section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975).

A federal conviction by a jury from which women had been excluded, although eligible for service under state law, was reviewed in *Ballard v. United States*, 329 U.S. 187 (1946). Noting the federal statutory "design to make the jury 'a cross-section of the community'" and the fact that women had been excluded, the Court exercised its supervisory powers over the federal courts and reversed the conviction. In *Brown v. Allen*, 344 U.S. 443, 474 (1953), the Court declared that "[o]ur duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty." *Id.* at 527, 528.

[I]n *Apodaca v. Oregon*, 406 U.S. 404, 410-411 (1972) (plurality opinion), it was said that "a jury will come to such a [commonsense] judgment as long as it consists of a group of laymen representative of a cross section of the community who have the duty and the opportunity to deliberate… on the question of a defendant's guilt." *Id.* at 528.

Congress also established the machinery by which the stated policy was to be implemented. 28 U.S.C. 1862-1866. In passing this legislation, the Committee Reports of both the House 7 and the Senate 8 recognized that the jury plays a political function in the administration of the law and that the requirement of a jury's being chosen from a fair cross section of the community is fundamental to the American system of justice. *Id.* at 529, 530.

This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool…. Restricting jury service to only special groups or excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial. "Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case....[T]he broad representative character of the jury should be maintained, partly as assurance of a diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility." *Thiel v. Southern Pacific Co.,* 328 U.S. 217, 227 (1946) (Frankfurter, J., dissenting). *Id.* at 530, 531.

We are also persuaded that the fair-cross-section requirement is violated by the systematic exclusion of women, who in the judicial district involved here amounted to 53% of the citizens eligible for jury service. This conclusion necessarily entails the judgment that women are sufficiently numerous and distinct from men and that if they are systematically eliminated from jury panels, the Sixth Amendment's fair-cross-section requirement cannot be satisfied. This very matter was debated in *Ballard v. United States*, supra. Positing the fair-cross-section rule – there said to be a statutory one – the Court concluded that the systematic exclusion of women was unacceptable. The dissenting view that an all-male panel drawn from various groups in the community would be as truly representative as if women were included, was firmly rejected:

"....But, if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the court-room from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded." 329 U.S., at 193-194. [12] *Id.* at 531, 532, 533.

Our holding does not augur or authorize the fashioning of detailed jury-selection codes by federal courts. The fair-cross-section principle must have much leeway in application. The States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions so long as it may be fairly said that the jury lists or panels are representative of the community. *Carter v. Jury Comm'n,* supra, as did *Brown v. Allen*, supra; *Rawlins v. Georgia,* supra, and other cases, recognized broad discretion in the States in this respect. We do not depart from the principles enunciated in *Carter*. But, as we have said, Louisiana's special exemption for women operates to exclude them from petit juries, which in our view is contrary to the command of the Sixth and Fourteenth Amendments." *Id.* at 537, 538.

[T]he jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof. *Id.* at 538.

[Footnote 7] H. R. Rep. No. 1076, 90th Cong., 2d Sess., 8 (1968): "It must be remembered that the jury is designed not only to understand the case, but also to reflect the community's sense of justice in deciding it. As long as there are significant departures from the cross sectional goal, biased juries are the result – biased in the sense that they reflect a slanted view of the community they are supposed to represent." See S. Rep. No. 92-516, p. 3 (1971).

[Footnote 8] S. Rep. No. 891, 90th Cong., 1st Sess., 9 (1967): "A jury chosen from a representative community sample is a fundamental of our system of justice." Both the Senate and House Reports made reference to the decision of the Court of Appeals in *Rabinowitz v. United States*, 366 F.2d 34, 57 (CA5 1966), which, in sustaining an attack on the composition of grand and petit jury venires in the Middle District of Georgia, had held that both the Constitution and 28 U.S.C. 1861, prior to its amendment in 1968, required a system of jury selection "that will probably result in a fair cross-section of the community being placed on the jury rolls." See S. Rep. No. 891, supra, at 11, 18; H. R. Rep. No. 1076, supra, n. 7, at 4, 5. Elimination of the "key man" system throughout the federal courts was the primary focus of the Federal Jury Selection and Service Act of 1968. See H. R. Rep. No. 1076, supra, at 4 and n. 1.

[Footnote 12] Compare *Peters v. Kiff*, 407 U.S. 493, 502-504 (1972) (opinion of MARSHALL, J., joined by DOUGLAS and STEWART, JJ.): "These principles compel the conclusion that a State cannot, consistent with due process, subject a defendant to indictment or trial by a jury that has been selected in an arbitrary and discriminatory manner, in violation of the Constitution and laws of the United States. Illegal and unconstitutional jury selection procedures case doubt on the integrity of the whole judicial process. They create the appearance of bias in the decision of individual cases, and they increase the risk of actual bias as well." But the exclusion from jury service of a substantial and identifiable class of citizens has a potential impact that is too subtle and too pervasive to admit of confinement to particular issues or particular cases.... "When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented." (Footnote omitted.).

Smith v. State of Texas, 311 U.S. 128 (1940)

It is part of the established tradition in the use of the juries as instruments of public justice that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it 4 but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles. The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given – not merely promised. *Id*. at 128.

[Footnote 4] 'No citizen possessing all other qualifications... shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; ....' 18 Stat. 336, 8 U.S.C. 44, 8 U.S.C.A. 44.

What the Fourteenth Amendment prohibits is racial discrimination in the selection of grand juries.... If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand. *Id.* at 128.

Batson v. Kentucky, 476 U.S. 79 (1986)

[T]he Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race, or on the false assumption that members of his race as a group are not qualified to serve as jurors. By denying a person participation in jury service on account of his race, the State also unconstitutionally discriminates against the excluded juror. *Id.* at 79.

Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure. "The very idea of a jury is a body ... composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds." *Strauder*, supra, at 308; see *Carter v. Jury Comm'n of Greene County*, 396 U.S. 320, 330 (1970)' *Id.* at 86.

In cases involving the venire, this Court has found a prima facie case on proof that members of the defendant's race were substantially underrepresented on the venire from which his jury was drawn, and that the venire was selected under a practice providing "the opportunity for discrimination." *Whitus v. Georgia*, supra, at 552; see *Castaneda v. Partida*, supra, at 494; *Washington v. Davis,* supra, at 214; *Alexander v. Louisiana*, supra, at 629-631.' *Id.* at 95.

Even if all parties approach the Court's mandate with the best of conscious intentions, that mandate requires them to confront and overcome their own racism on all levels – a challenge I doubt all of them can meet. It is worth remembering that "114 years after the close of the War Between the States and nearly 100 years after *Strauder*, racial and other forms of discrimination still remain a fact of life, in the administration of justice as in our society as a whole." *Rose v. Mitchell,* 443 U.S. 545, 558-559 (1979), quoted in *Vasquez v. Hillery*, 474 U.S. 254, 264 (1986).' *Id.* at 106-107.

Thiel v. Southern Pacific Co., 328 U.S. 217 (1946)

The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. *Smith v. Texas*, 311 U.S. 128, 130, 61 S. Ct. 164, 165, 85 L. Ed. 84; *Glasser v. United States*, 315 U.S. 60, 85, 62 S. Ct. 457, 471. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does not mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. *Id.* at 220.

Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case. *Id.* at 227.

Carter v. State of Texas, 177 U.S. 442 (1900)

The rules of law which must govern this case are clearly established by previous decisions of this court. Whenever by any action of a state, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. *Strauder v. West Virginia*, 100 U.S. 303, 25 L. ed. 664; *Neal v. Delaware*, 103 U.S. 370, 397, 26 S. L. ed. 567, 574; *Gibson v. Mississippi*, 162 U.S. 565, 40 L. ed. 1075, 16 Sup. Ct. Rep. 904. *Id.* at 446, 447.

Hernandez v. Texas, 347 U.S. 475 (1954)

The systematic exclusion of persons of Mexican descent from service as jury commissioners, grand jurors, and petit jurors in the Texas county in which petitioner was indicted and tried for murder, although there were a substantial number of such persons in the county fully qualified to serve, deprived petitioner, a person of Mexican descent, of the equal protection of the laws guaranteed by the Fourteenth Amendment, and his conviction in a state court is reversed.

... When the existence of a distinct class is demonstrated, and it is shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated.

... The exclusion of otherwise eligible persons from jury service solely because their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment.

... A prima facie case of denial of the equal protection of the laws was established in this case by evidence that there were in the county a substantial number of persons of Mexican descent with the qualifications required for jury service but that none of them had served on a jury commission, grand jury or petit jury for 25 years.

... The testimony of five jury commissioners that they had not discriminated against persons of Mexican descent in selecting jurors, and that their only objective had been to select those whom they thought best qualified, was not enough to overcome petitioner's prima facie case of denial of the equal protection of the laws.

... Petitioner had the constitutional right to be indicted and tried by juries from which all members of his class were not systematically excluded. *Hernandez v. Texas,* 347 U.S. 475 (1954).

In numerous decisions, this Court has held that it is a denial of the equal protection of the laws to try a defendant of a particular race or color under an indictment issued by a grand jury, or before a petit jury, from which all persons of his race or color have, solely because of that race or color, been excluded by the State, whether acting through its legislature, its courts, or its executive or administrative officers.2 Although the Court has had little occasion to rule on the question directly, it has been recognized since *Strauder v. West Virginia*, 100 U.S. 303, that the exclusion of a class of persons from jury service on grounds other than race or color may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws.3 The State of Texas would have us hold that there are only two classes... within the contemplation of the Fourteenth Amendment. The decisions of this Court do not support that view.4 And, except where the question presented involves the exclusion of persons of Mexican descent from juries, 5 Texas courts have taken a broader view of the scope of the equal protection clause.6 *Id.* at 477, 478.

Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a "two-class theory".... *Id* at 478.

[Footnote 2] See *Carter v. Texas*, 177 U.S. 442, 447.

[Footnote 3] "Nor if a law should be passed excluding all naturalized Celtie Irishmen [from jury service], would there be any doubt of its inconsistency with the spirit of the amendment." 100 U.S., at 308. Cf. *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89, 92.

[Footnote 4] See *Truax v. Raich*, 239 U.S. 33, *Takahashi v. Fish & Game Commission*, 334 U.S. 410. Cf. *Hirabayashi v. United States*, 320 U.S. 81, 100 : "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.

[Footnote 5] *Sanchez v. State*, 147 Tex. Cr. R. 436, 181 S. W. 2d 87; *Salazar v. State*, 149 Tex. Cr. R. 260, 193 S.W.2d 211; *Sanchez v. State*, 243 S.W.2d 700.

[Footnotes 6] In *Juarez v. State*, 102 Tex. Cr. R. 297, 277 S. W. 1091, the Texas court held that the systematic exclusion of Roman Catholics from juries was barred by the Fourteenth Amendment. In *Clifton v. Puente*, 218 S. W. 2d 272, the Texas court ruled that restrictive covenants prohibiting the sale of land to persons of Mexican descent were unenforceable.

Glasser v. United States, 315 U.S. 60 (1942)

For the mechanics of trial by jury we revert to the common law as it existed in this country and in England when the Constitution was adopted. *Patton v. United States,* 281 U.S. 276, 50 S. Ct. 253, 70 A.L. R. 263. But even as jury trial, which was a privilege at common law, has become a right with us, so also, whatever limitations were inherent in the historical common law concept of the jury as a body of one's peers do not prevail in this country. Our notions of what a proper jury is have developed in harmony with our basic concepts of a democratic society and a representative government. For 'It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.' *Smith v. Texas*, 311 U.S. 128, 130, 61 S. Ct. 164, 165. *Glasser v. United States,* 315 U.S. 60, 85 (1942)

And its exercise must always accord with the fact that the proper functioning of the jury system, and, indeed, our democracy itself, requires that the jury be a truly representative of the community', and not the organ of any special group or class. If that requirement is observed, the officials charged with choosing federal jurors may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross-section of the community. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted. That the motives influencing such tendencies may be of the best must not blind us to the dangers of allowing any encroachment whatsoever on this essential right. Steps innocently taken may one by one lead to the irretrievable impairment of substantial liberties. *Id.* at 85, 86.

Gulliford v. Pierce County, 136 F.3d 1345 (9th Cir. 1998)

The Supreme Court has consistently held that the First Amendment protects verbal criticism, challenges, and profanity directed at police officers unless the speech is "'shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.'" *City of Houston, Texas v. Hill*, 482 U.S. 451, 461-63 (1987) (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949); see also *Lewis v. City of New Orleans*, 415 U.S. 130, 132-134 (1974). *Gulliford v. Pierce County,* 136 F.3d 1345 (9th Cir. 1998)

"The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Id.* at 462-63. *Gulliford v. Pierce County,* 136 F.3d 1345 (9th Cir. 1998)

Japanese Electronic Products Antitrust Litigation v. Zenith Radio Corp. and National Union Electric Corp., 631 F.2d 1069 (1980)

If judicial decisions are not based on factual determinations bearing some reliable degree of accuracy, legal remedies will not be applied consistently with the purposes of the laws. There is a danger that jury verdicts will be erratic and completely unpredictable, which would be inconsistent with evenhanded justice. Finally, unless the jury can understand the evidence and the legal rules sufficiently to rest its decision on them, the objective of most rules of evidence and procedure in promoting a fair trial will be lost entirely. *Japanese Electronic Products Antitrust Litigation v. Zenith Radio Corp. and National Union Electric Corp.*, 631 F.2d 1069, 1084 (1980).

Caldwell v. Mississippi, 472 U.S. 320 (1985)

Bias against the defendant clearly stems from the institutional limits on what an appellate court can do – limits that jurors often might not understand. The "delegation" of sentencing responsibility that the prosecutor here encouraged would thus not simply postpone the defendant's right to a fair determination of the appropriateness of his death; rather it would deprive him of that right, for an appellate court, unlike a capital sentencing jury, is wholly ill-suited to evaluate the appropriateness of death in the first instance. Whatever intangibles a jury might consider in its sentencing determination, few can be gleaned from an appellate record. This inability to confront and examine the individuality of the defendant would be particularly devastating to any argument for consideration of what this Court has termed "[those] compassionate or mitigating factors stemming from the diverse frailties of humankind." *Woodson*, supra, at 340. When we held that a defendant has a constitutional right to the consideration of such factors, *Eddings*, supra; *Lockett*, supra, we clearly envisioned that that consideration would occur among sentencers who were present to hear the evidence and arguments and see the witnesses. As the dissenters below noted:

"The [mercy] plea is made directly to the jury as only they may impose the death sentence. Under our standards of appellate review mercy is irrelevant. There is no appellate mercy. Therefore, the fact that review is mandated is irrelevant to the thought processes required to find that an accused should be denied mercy and sentenced to die." 443

So.2d, at 817 (Lee, J., joined by Patterson, C. J., and Prather and Robertson, JJ., dissenting). *Caldwell v. Mississippi*, 472 U.S. 320, 330, 331 (1985).

Given these limits, most appellate courts review sentencing determinations with a presumption of correctness. This is the case in Mississippi, where, as the dissenters below pointed out: "Even a novice attorney knows that appellate courts do not impose a death penalty, they merely review the jury's decision and that review is with a presumption of correctness." *Id.*, at 816 (Lee, J., joined by Patterson, C. J., and Prather and Robertson, JJ., dissenting). See also Miss. Code Ann. 99-19-105 (Supp. 1984) (defining scope of appellate review of capital sentencing). *Id.* at 331.

It is, therefore, not surprising that legal authorities almost uniformly have strongly condemned the sort of argument offered by the prosecutor here. For example, this has been the view of almost all of the State Supreme Courts that have dealt with this question since *Furman* v. Georgia, 408 U.S. 238 (1972). 4 Indeed, even before *Furman* the sort of argument offered by the prosecutor here was viewed as clearly improper by most state courts, whether in capital or noncapital cases. 5 The American Bar Association, in its standard for prosecutorial conduct, agrees with this judgment. 6 And even the Mississippi Supreme Court, since deciding *Caldwell*, has adopted the position that arguments very similar to that used here are sufficiently improper to merit vacating a death sentence. See *Wiley v. State*, 449 So.2d 756 (1984); *Williams v. State*, 445 So.2d 798 (1984). *Id.* at 334-335.

[Footnote 4] See, e.g., *Hawes v. State*, 240 Ga. 327, 333, 240 S. E. 2d 833, 839 (1977) (setting aside death sentence in spite of counsel's failure to object to prosecutor's argument); *Fleming v. State*, 240 Ga. 142, 146, 240 S. E. 2d 37, 40 (1977) (setting aside death sentence in spite of curative instruction); *State v. Willie*, 410 So.2d 1019, 1034-1035 (La. 1982) (use of this argument by prosecutor calls for setting aside death sentences even in the absence of other improprieties); *State v. Jones*, 296 N.C. 495, 498-499, 251 S. E. 2d 425, 427 (1979) (ordering new trial on issue of guilt in capital case where argument was used during guilt phase even though there was no contemporaneous objection); *State v. White*, 286 N.C. 395, 404-405, 211 S. E. 2d 445, 450 (1975) (ordering new trial on issue of guilt in capital case where argument was used during guilt phase even though trial judge gave curative instruction); *State v. Gilbert*, 273 S. C. 690, 696-698, 258 S. E. 2d 890, 894 (1979) (setting aside death sentence in spite of defendant's failure to raise issue on appeal).

[Footnote 5] See, e.g., *People v. Morse*, 60 Cal. 2d 631, 649-653, 388 P.2d 33, 44-47 (1964); *Pait v. State*, 112 So.2d 380, 383-384 (Fla. 1959); Blackwell v. State, 79 So. 731, 735-736 (Fla. 1918); *People v. Johnson*, 284 N. Y. 182, 30 N. E. 2d 465 (1940); *Beard v. State*, 19 Ala. App. 102, 95 So. 333 (1923). See generally Annot., *Prejudicial Effect of Statement of Prosecutor that if Jury Makes Mistake in Convicting It Can Be Corrected by Other Authorities*, 3 A. L. R. 3d 1448 (1965), Annot., *Prejudicial Effect of Statement of Court that if Jury Makes Mistake in Convicting It Can Be Corrected by Other Authorities*, 5 A. L. R. 3d 974 (1966).

[Footnote 6] See *ABA Standards for Criminal Justice* 3-5.8 (2d ed. 1980) ("References to the likelihood that other authorities, such as the governor or the appellate courts, will correct an erroneous conviction are impermissible efforts to lead the jury to shirk responsibility for its decision."). *Id.*, at 3.90.

Admittedly, some of the remarks early in the prosecutor's rebuttal indicated that the jury's decision was not "final" because it was subject to appellate review. But viewed in its entirety, cf. *Cupp v. Naughten*, 414 U.S. 141 (1973), it is evident that the thrust of the prosecutor's argument was that the jury was not solely responsible for petitioner's sentence. *Id.* at 348.

Fonck v. Stratford, 24 Conn. App. 1, 584 A.2d 1198 (1991)

A well established rule is that a statement by counsel, not under oath, of material fact pertinent to the issues unsupported by evidence, and prejudicial to the opposing party, constitutes reversible error unless it appears that the prejudicial effect has been effectively averted by an instruction to disregard the statement, or otherwise.... It is the duty of [this court] to weigh the probable effect of the statement upon the issues of the case, then look to the action of the trial court in dealing with it, and if it is reasonably clear that the effect has not been eliminated, reversal is required. (Internal quotation marks omitted.) *Fonck v. Stratford*, 24 Conn. App. 1, 3, 584 A.2d 1198 (1991).

Hutchinson v. Plante, 175 Conn. 1, 392 A.2d 488 (1978)

Motor vehicle operators are not in business of having accidents and have no business duty to give information to to investigating officers, and thus their statements as contained in police accident report may not be admitted for truth of matters stated unless statements qualify under some other exception than as a business entry to the hearsay rule, such as admissions. C.G.S.A. § 52-180. *Id.* at 488.

Diagram and description of accident, which were contained in traffic accident report and which were based on defendant tractor trailer operator's version of events, were self-serving hearsay as to such operator as they tended to show either that he was not negligent in being unable to avoid plaintiff's skidding car or that plaintiff was negligent in accelerating and skidding out of control, and such portion of report was therefore inadmissible as business entry since operator had no business duty to make such statements nor did it appear that diagram and description of accident fell within any other exception to hearsay rule. C.G.S.A. § 52-180. *Id.* at 488

[6].... As it does not appear that the diagram and description of the accident fell within any other exception to the hearsay rule, they were erroneously admitted into evidence. *Id.* at 491.